TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted]

No. [redacted] 34

LOUIS K. LIGGETT COMPANY, APPELLANT,

vs.

THE HONORABLE THOMAS J. BALDRIGE, ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA; CHARLES C. CAMPBELL, CHARLES P. KRAMER, ET AL., ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED [redacted]

(33,125)

Without [illegible] [illegible]
things but often they do.

The state may reasonably regulate its business &
provide the [illegible] of [illegible]. Safety
& [illegible] of public is the basis. Ownership
& the [illegible] is not directly related to [illegible] the busi-
ness of [illegible] matters is different from
the [illegible] & [illegible] of [illegible]. The [illegible]
of [illegible], [illegible] or other [illegible] require
the [illegible] of [illegible] is [illegible] of [illegible]
is to be done in a [illegible] [illegible]. No [illegible]
discretion is required. It is more like a [illegible]
case of [illegible] power by others. The prohibition
[illegible] by the [illegible] or by [illegible]

(33,125)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 673

LOUIS K. LIGGETT COMPANY, APPELLANT,

vs.

THE HONORABLE THOMAS J. BALDRIGE, ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, CHARLES C. CAMPBELL, CHARLES F. KRAMER, ET AL., ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA

MARCH TERM, 1927

In Equity

No. 4075

LOUIS K. LIGGETT COMPANY, a Corporation, Plaintiff,

vs.

The Honorable THOMAS J. BALDRIGE, Attorney General of The Commonwealth of Pennsylvania; Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell, and John A. H. Keith, Constituting the Pennsylvania Board of Pharmacy; the Honorable Charles Edwin Fox, District Attorney for the County of Philadelphia, Pennsylvania, and the Honorable M. H. Spicker, District Attorney for the County of Schuylkill, Pennsylvania, Defendants.

BILL OF COMPLAINT—Filed June 4, 1927

To the Honorable the Judges of the said Court:

The Louis K. Liggett Company, a corporation, brings this its bill of complaint against the Honorable Thomas J. Baldrige, Attorney General of the Commonwealth of [fol. 4] Pennsylvania; Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, constituting the Pennsylvania Board of Pharmacy; the Honorable Charles Edwin Fox, District Attorney for the County of Philadelphia, Pennsylvania; and the Honorable M. H. Spicker, District Attorney for the County of Schuylkill, Pennsylvania; and thereupon complains and says:

1. The plaintiff was at all times hereinafter mentioned and still is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts; and since March 1, 1916, has been duly registered and qualified to

carry on and has actually carried on a retail drug business in the State of Pennsylvania.

2. The defendant, Thomas J. Baldrige, is the duly appointed and qualified Attorney General of the Commonwealth of Pennsylvania; and is a citizen of the United States and a resident of the City of Harrisburg, County of Dauphin, State of Pennsylvania, and Middle District of said State.

3. The defendants, Charles C. Campbell Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, ex officio, are the duly appointed and qualified Pennsylvania Board of Pharmacy; and are citizens of the United States.

The defendant, Charles C. Campbell, resides at 6106 Penn Avenue, Pittsburg, Allegheny County, Pennsylvania, and Western District of said State.

The defendant, Charles F. Kramer, resides at 1225 North Third Street, Harrisburg, Dauphin County, Pennsylvania; the defendant, Lucius L. Walton, resides at Fourth and Pine Streets, Williamsport, Lycoming County, Pennsylvania; the defendant, Henry W. Merritt, resides at Plains, Luzerne County, Pennsylvania; and the defendant, John A. H. Keith, resides at Harrisburg, Dauphin County, Pennsylvania—all of the foregoing residences being in the Middle District of the State of Pennsylvania.

[fol. 5] The defendant Walter Rothwell resides at Hatboro, Bucks County, Pennsylvania, and Eastern District of said State.

4. The defendant, Charles Edwin Fox, is the duly elected and qualified District Attorney for the City and County of Philadelphia, State of Pennsylvania; and is a citizen of the United States and a resident of the aforesaid City and County, and Eastern District of said State.

5. The defendant, M. H. Spicker, is the duly elected and qualified District Attorney for the County of Schuylkill, State of Pennsylvania; and is a citizen of the United States and a resident of the City of Pottsville, County of Schuylkill, State of Pennsylvania, and Eastern District of said State.

6. The matter in controversy in this case, exclusive of interest and costs, exceeds the sum or value of $3,000.00.

7. The retail drug business of the plaintiff within the State of Pennsylvania was prior to the passage of the Supplement of May 13, 1927 (Exhibit A hereof), and still is carried on at twenty-eight retail drug stores owned by it, upon premises leased by it at the following respective addresses:

1541 Chestnut St., Philadelphia, Penna.
14 So. 52nd St., Philadelphia, Penna.
3701 Germantown Ave., Philadelphia, Penna.
839 Market St., Philadelphia, Penna.
300 So. Broad St., Philadelphia, Penna.
4662 Frankford Ave., Philadelphia, Penna.
1210 Market St., Philadelphia, Penna.
19 So. 60th St. Philadelphia, Penna.
1341 West Columbia Ave., Philadelphia, Penna.
4401 Frankford Ave. Philadelphia, Penna.
16th and Market Sts., Philadelphia, Penna.
144-6 So. 52nd St., Philadelphia. Penna.
[fol. 6] 4100 Lancaster Ave., Philadelphia, Penna.
1331 Chestnut St., Philadelphia, Penna.
5700 Germantown Ave., Philadelphia, Penna.
2354 No. Front St., Kensington, Philadelphia, Penna.
500 Market St., Chester, Penna.
404 Northampton St., Easton, Penna.
31-33 No. Queens St., Lancaster, Penna.
4 West Market St., York, Penna.
601 Penn Street, Reading, Penna.
25 So. Main St., Wilkes-Barre, Penna.
357 Pine St., Williamsport, Penna.
1116 11th St., Altoona, Penna.
424 Main Street, Johnstown, Penna.
1 No. Main St., Chambersburg, Penna.
355 Fifth Ave., Pittsburgh, Penna.
802-4 State Street, Erie, Penna.

8. The above enumerated retail drug stores owned by the plaintiff were prior to the passage of the Supplement of May 13, 1927 (Exhibit A), and still are under the management and personal supervision of pharmacists duly registered as such under the act of the Pennsylvania Legislature of May 17, 1917, P. L. 208—each of said pharmacists having personal supervision of not more than one of said stores—; and also each of said retail drug

stores owned by the plaintiff was prior to the passage of the said Supplement of May 13, 1927, and still is duly registered with and has a permit issued by the Pennsylvania Board of Pharmacy under the Supplemental Act of the Pennsylvania Legislature of May 26, 1921, P. L. 1172.

9. On the 13th day of May, 1927, the Governor of the Commonwealth of Pennsylvania approved a further Supplement to the Act of May 17, 1917, enacted by the General Assembly of said Commonwealth, a full, true and correct copy of which Supplement is attached to and made a part of this bill of complaint, marked "Exhibit A."

[fol. 7] 10. Prior to the passage of said Supplement, the plaintiff by an indenture of lease, dated February 20, 1926, leased from one Harry E. Kerstine the premises 901-03 Market Street, Philadelphia, Pennsylvania, for a term of twenty-one years, beginning July 15, 1927, and ending July 14, 1948, and for the purpose of owning and carrying on, inter alia, a retail drug store on the demised premises. A full, true and correct copy of said indenture of lease is attached to and made a part of this bill of complaint, marked "Exhibit B."

11. The plaintiff intended at the time it entered into the above mentioned lease and still intends to own and carry on a retail drug business on the said demised premises under the title "Pharmacy" or "Drug Store" and through registered pharmacists in its employ in accordance with the aforesaid Act of May 17, 1917, and Supplemental Act of May 25, 1921, said business including the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs.

12. Prior to the passage of said Supplement, the plaintiff by an indenture of lease, dated May 11, 1927, leased from one William S. Cowen the premises 13 South Center Street, Pottsville, Pennsylvania, for a term of ten years beginning May 19, 1927, and ending May 31, 1937, and for the purpose of operating, inter alia, a retail drug store on the demised premises. At the same time, the plaintiff agreed to purchase of the said William S. Cowen the retail drug

business owned and carried on by the said William S. Cowen on the said demised premises, together with all salable merchandise and stock in trade (including drugs, medicines, chemicals, toilet articles, stationery and goods and wares of every kind) and the furniture, fixtures, equipment, containers, utensils, cash registers, prescription files and records, and chattels and property of every nature and description, etc. Full, true and correct copies of said indenture of lease and agreement of sale are attached to and made a part of this bill of complaint, marked "Exhibits C and D."

[fol. 8]

13. The plaintiff intended at the time it entered into the above mentioned lease and agreement of sale and still intends to own and carry on a retail drug business on the said demised premises under the title "Pharmacy" or "Drug Store" and through registered pharmacists in its employ in accordance with the aforesaid Act of May 17, 1917, and Supplemental Act of May 26, 1921, said business including the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs.

14. In addition to the aforesaid drug stores owned by it, the plaintiff intends to lease or purchase and to establish and own other and additional pharmacies or drug stores within the State of Pennsylvania, and through registered pharmacists in its employ, and under the title "Pharmacy" or "Drug Store" to carry on its retail drug business therein, in accordance with the aforesaid Act of May 17, 1917, and Supplemental Act of May 26, 1921, said business including the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs.

15. The issued and outstanding capital stock of the plaintiff consists of 98,500 shares of common stock and 5 shares of preferred stock, all of the par value of $100 per share. Its Board of Directors is composed of 10 members. With the exception of John S. Alley, Vice-President, and R. H. Badanes, Secretary (who are registered pharmacists of Massachusetts), W. J. Rash, Vice-President, (a registered pharmacist of New York), F. L. Tompkins, a director (a

registered pharmacist of Rhode Island), and S. S. McCully, a preferred stockholder (a registered pharmacist of Rhode Island and Massachusetts), no person, who is a stockholder, director or officer of the plaintiff corporation, is a registered pharmacist.

[fol. 9] 16. Under Section 2 of said Supplement (Exhibit A), the ownership and carrying on of a retail drug business on the demised premises above mentioned (Exhibits B and C) and the ownership, establishment, acquisition and carrying on of additional or other retail drug businesses will constitute a misdemeanor on the plaintiff's part, because the said "Pharmacies" or "Drug Stores" are owned or will be owned by a corporation, of which all the members or partners are not registered pharmacists, although the same are to be operated and conducted by plaintiff under the management and personal supervision of registered pharmacists in its employ in accordance with the aforesaid Act of May 17, 1917, and Supplemental Act of May 26, 1921; and with respect to each of said "Pharmacies" or "Drug Stores," will subject the plaintiff to a fine of not more than $100 each day that the respective "Pharmacy" or "Drug Store" is owned contrary to the provisions of said Supplement (Exhibit A).

17. Under the terms of said Supplement, unless the plaintiff is able to obtain new leases upon the respective premises referred to in paragraph 7 of this bill of complaint, upon the expiration of the respective terms provided for in the existing leases thereof, the plaintiff will be forced to discontinue its drug business within the State of Pennsylvania and the value of such business will be practically destroyed.

18. The plaintiff is advised by its counsel, believes and therefore avers that the said Supplement (Exhibit A) is unconstitutional in that (a) it deprives the plaintiff of its property without due process of law and denies to the plaintiff the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States and (b) it impairs the obligations of the plaintiff's contracts in violation of Section 10 of Article I of the Constitution of the United States.

[fol. 10] 19. Under the terms of said Supplement (Exhibit A), it is the duty of the Attorney General of the Commonwealth of Pennsylvania and the District Attorneys of the proper counties of the State of Pennsylvania to prosecute any and all corporations violating the provisions of the said Supplement; and in the performance of that duty, the defendants Thomas J. Baldrige, Charles Edwin Fox and M. H. Spicker intend to prosecute the plaintiff if it should own or carry on a retail drug business on the demised premises in the cities of Philadelphia and Pottsville (Exhibits B and C) under the title "Pharmacy" or "Drug Store" and through registered pharmacists in its employ, said business including the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs, as a violation of the provisions of said Supplement.

20. Under the terms of said Supplement (Exhibit A), it is the duty of the Pennsylvania Board of Pharmacy to refuse and deny the plaintiff a license to own and carry on a retail drug business on the demised premises in the cities of Philadelphia and Pottsville (Exhibits B and C) under the title "Pharmacy" or "Drug Store" and through registered pharmacists in its employ, said business including the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs; and in the performance of that duty, the defendants, Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, ex officio, as the Pennsylvania Board of Pharmacy, intend to refuse and deny the plaintiff a license to conduct the aforesaid retail drug businesses.

21. Under the terms of the Supplemental Act of May 26, 1921, P. L. 1172, it is the right of the Pennsylvania Board of Pharmacy to suspend or revoke the licenses heretofore issued to the plaintiff to carry on a retail drug business [fol. 11] within the State of Pennsylvania upon the conviction of the plaintiff for a second or any subsequent violation of any law of the State of Pennsylvania or of the

United States pertaining to the drug business, or for aiding or abetting in the violation of any such law; and in the performance of that right, the defendants, Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, ex officio, as the Pennsylvania Board of Pharmacy, intend forthwith to suspend or revoke the licenses heretofore issued to the plaintiff for owning and carrying on pharmacies or drug stores within the State of Pennsylvania in violation of the provisions of the aforesaid Supplement of May 13, 1927 (Exhibit A).

22. The plaintiff avers that a compliance with the Supplement of May 13, 1927 (Exhibit A), by the plaintiff will destroy valuable existing contract and property rights, thereby causing immediate irreparable injury to the plaintiff's business within the State of Pennsylvania and also will seriously impair the plaintiff's business elsewhere within the United States; and further avers that a failure to comply with said Supplement (Exhibit A) will forthwith subject the plaintiff to oppressive penalties and a multiplicity of suits.

Wherefore, the plaintiff is in need of equitable relief and prays:

A. That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the defendants, Thomas J. Baldrige, Charles Edwin Fox and M. H. Spicker, from prosecuting or bringing any criminal action against the plaintiff for a violation of the Supplement of May 13, 1927, because of the ownership and carrying on by the plaintiff of a retail drug business (including the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs) on the demised premises in the cities of Philadelphia and Pottsville (Ex- [fol. 12] hibits B and C) under the title "Pharmacy" or "Drug Store," when such "Pharmacies" or "Drug Stores" are owned by a corporation, all of the members and partners of which are not registered pharmacists; or because of the ownership and carrying on by the plaintiff of a like retail drug business on a site leased or purchased by the

plaintiff in the said counties of Philadelphia and Schuylkill, State of Pennsylvania, when such business is owned by a corporation all of the members and partners of which are not registered pharmacists.

B. That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the defendants, Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, ex officio, as the Pennsylvania Board of Pharmacy, from refusing and denying the plaintiff a license to own and carry on a retail drug business under the title "Pharmacy" or "Drug Store" and through registered pharmacists in its employ on the demised premises in the Cities of Philadelphia and Pottsville (Exhibits B and C) or on any other or additional premises leased or purchased by the plaintiff within the State of Pennsylvania and from suspending or revoking any licenses heretofore issued to the plaintiff to carry on a retail drug business in Pennsylvania, because such business is owned by a corporation, all of the members and partners of which are not registered pharmacists.

C. Such other and further relief as to your Honorable Court shall seem meet.

D. That a duplicate writ may issue out of and under the seal of this Honorable Court, directed to the United States Marshal of the Western District of the State of Pennsylvania for service upon the defendant Charles C. Campbell; and that a duplicate writ may issue out of and under the [fol. 13] seal of this Honorable Court, directed to the United States Marshal of the Middle District of the State of Pennsylvania for service upon the defendants, Thomas J. Baldrige, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt and John A. H. Keith;—said duplicate writs therein and thereby commanding the said defendants and each of them on a certain day therein to be named and under a certain penalty to be and appear before this Honorable Court, then and there to answer all and singular the premises, and to stand to, perform and abide by any order, direction and decree which may be made against them and each of them in the premises.

And the plaintiff will ever pray, etc.

Roy M. Sterne, Owen J. Roberts, Attorneys for Plaintiff.

[fol. 14] *Duly sworn to by John S. Alley. Jurat omitted in printing.*

[fol. 15] EXHIBIT A TO COMPLAINT

A Supplement

To the act approved the seventeenth day of May one thousand nine hundred and seventeen (Pamphlet Laws two hundred and eight) entitled "An act to regulate the practice of pharmacy and sale of poisons and drugs and providing penalties for the violation thereof defining the words 'drugs' and 'poison' and providing for the appointment of a board which shall have in charge the enforcement of said law and the power to make rules and regulations for the enforcement of said law and providing for the purchase of samples of drugs for determining their quality strength and purity" regulating the ownership of pharmacies and drug stores and providing penalties.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same That every pharmacy or drug store shall be owned only by a licensed pharmacist and no corporation association or copartnership shall own a pharmacy or drug store unless all the partners or members thereof are licensed pharmacists except that any corporation organized and existing under the laws of the Commonwealth or of any other state of the United States and authorized to do business in the Commonwealth and empowered by its charter to own and conduct pharmacies or drug stores and any association or copartnership which at the time of the passage of this act still owns and conducts a registered pharmacy or pharmacies or a drug store or drug stores in the Commonwealth may continue to own and conduct the same, but no other or additional pharmacies or drug stores shall be established owned or conducted by

such corporation association or copartnership unless all the members or partners thereof are registered pharmacists but any such corporation association or copartnership which shall not continue to own at least one of the pharmacies or drug stores theretofore owned by it or ceases to be [fol. 16] actively engaged in the conduct of a pharmacy shall not be permitted thereafter to own a pharmacy or a drug store unless all of its partners or members are registered pharmacists and except that any person not a licensed pharmacist who at the time of the passage of this act owns a pharmacy or a drug store in the Commonwealth may continue to own and conduct the same but shall not establish or own any additional pharmacy or drug store or if he or she ceases to operate such pharmacy or drug store shall not thereafter own a pharmacy or drug store unless he or she be a registered pharmacist and except that the administrator executor or trustee of the estate of any deceased owner of a registered pharmacy or drug store may continue to own and conduct such pharmacy or drug store during the period necessary for the settlement of the estate Provided That nothing in this section shall be construed to prevent or affect the ownership by other than a registered pharmacist of a store or stores wherein the sale or manufacture of drugs or medicines is limited to proprietary medicines and commonly used household drugs Provided such commonly used household drugs are offered for sale or sold in packages which have been put up ready for sale to consumers by pharmacists manufacturing pharmacists wholesale grocers or wholesale druggists.

Section 2. Any person copartnership or corporation violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than one hundred dollars Each day any such pharmacy is owned contrary to the provisions of this act shall be considered a separate offense.

[fol. 17] EXHIBIT B TO COMPLAINT

This agreement made the 20th day of February 1926 by and between Harry E. Kerstine, of Philadelphia, Pa., (hereinafter called Landlord) of the one part, and Louis

K. Liggett Company, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts (hereinafter called Tenant) of the other part, Witnesseth:—

1. Landlord does hereby demise and let unto the Tenant the five story building, with the ground on which the same is situate, located at the Northwest corner of Ninth and Market Streets, in the City of Philadelphia, State of Pennsylvania, and being known as and by the numbers 901-903 Market Street, said ground being bounded and described as follows:

Situate on the Northwest corner of Market Street and Ninth Street, in the Ninth Ward of the City of Philadelphia, containing in front or breadth on the said Market Street, Twenty-six feet, eight and one-half inches, and extending of that width in length or depth, along the West side of said Ninth Street, One Hundred and Twelve feet three inches, to a certain Thirteen feet Nine inches wide alley, which runs Eastward to said Ninth Street and Westward to a certain court or street, Twenty-five feet six inches wide, called Percy Street, Eighty feet distant from the said Ninth street, which extends Northward parallel thereto, to a point Seventy feet South of Filbert Street, all the foregoing dimensions being approximate only.

Together with the free and common use of said alley and court.

together with the appurtenances thereunto belonging, for the term hereinafter provided.

2. The term of this lease shall be twenty-one years beginning July 15, 1927 and ending July 14, 1948, and the Ten- [fol. 18] ant shall pay a rental of Fifty thousand ($50,000) dollars, per annum, in equal monthly instalments of $4,-166.67, on the fifteenth day of each and every month in advance, and the further rent of all sums or sums which shall be legally assessed upon or become chargeable to the said premises during the term hereof for the use of gas or electric lighting and for all taxes and water rent or other Municipal charges chargeable to said demised premises during the entire term hereof, and for the maintenance of all fire insurance and rent insurance as hereinafter provided for.

3. And it is hereby mutually covenanted and agreed by and between the Landlord and Tenant, for themselves and their respective heirs, executors, administrators, successors and assigns in the manner following, it being understood that the premises are demised under and subject to these covenants and agreements and that they are to enure and to be regarded as strict legal conditions.

4. The Tenant shall pay the rent hereby reserved on the days and times hereinbefore mentioned, and also as the same becomes payable, for all gas and electric current consumed on or in the premises during the term hereof, and pay all bills for taxes, water rents or other municipal charges chargeable to said premises as the same become due and payable, and shall produce to the Landlord if so requested receipts for taxes on or before the first day of September in each and every year during the continuance of this lease, and a failure on the part of the Tenant so to do shall be deemed a failure to pay rent in the amount specified, and the Landlord shall have the right to levy and distrain for the same in the manner and under the terms and conditions, and with all the rights incident thereto, as are provided for the recovering of unpaid rent, including the waiver of exemption and the entry of an amicable action in ejectment, any law or custom to the contrary notwithstanding, including the maintenance of additional fire in-
[fol. 19] surance and rent insurance, as hereinafter provided for. Taxes for the first and last years shall be prorated.

5. The Tenant shall keep and at the expiration of the term peaceably deliver up the premises in like good order and condition as the same are delivered to it at the beginning of the term hereof, to wit: July 15, 1927, ordinary wear and tear, alterations and improvements permitted under this lease and casualties by fire and unavoidable accident alone excepted, and shall not knowingly do or commit, nor wilfully suffer to be done or committed, any act or thing contrary to the conditions and specifications of the policy or policies of insurance on the premises.

6. The said Tenant shall have the right to assign this lease as well as the right to sub-let the premises, to United Drug Company or any subsidiary or associate, or to any

other person or corporation for any lawful business, not more detrimental to the premises than its use by Tenant in the present business of Tenant, and which will not increase the fire insurance rate or vitiate the fire insurance upon said premises; provided, however, that Tenant shall be and remain liable to pay the rent as hereinabove provided, an assignment within the meaning of this Lease being understood and intended to comprehend not only the voluntary action of the Tenant, but also every levy or sale on execution or other legal process, and every assignment or sale in bankruptcy or insolvency, or under any other compulsory procedure or order of Court.

7. And the Tenant hereby waives and relinquishes unto and in favor of the Landlord the operation of all laws which do now or hereafter may exempt any property on the demised premises, or any property in any way belonging to the Tenant, whether on the demised premises or elsewhere, from levy and sale, upon distress for the rents or sums of money hereby reserved, including any sum or sums [fol. 20] chargeable for taxes, water rents or other Municipal charges as above provided for, and fire insurance and rent insurance as hereinafter provided for, or upon an execution of any judgment obtained in an action brought for non-payment of rent or for breach of any other of the within conditions. Provided, always, that if the Tenant shall fail or omit to pay the rents or sums hereby reserved, including taxes, water rents and other charges mentioned, on the days and times when the same are made payable, or within fifteen days thereafter (and time in this case is understood and agreed to be of the essence of the contract, and not to be relieved against or shall in any other respect violate any of the conditions and covenants herein contained, then this Lease, and the terms hereby created, shall, at the Landlord's option, to be signified by a written notice of his intention so to determine the Lease, on a day therein fixed, delivered to the Tenant, or left on the premises, at least ten days previous to the day so fixed, determine and become absolutely void, without any right on the Tenant, after the date so fixed, to save the forfeiture by payment of rent due, or by other performance of conditions thus violated.

And when the Lease shall be so determined by condition broken and notice as aforesaid, and also when and as soon

as the term hereby created shall have expired, it shall be lawful for any attorney, as Attorney for the Tenant, to sign an agreement for entering in any competent court an amicable action and judgment in ejectment (without any stay of execution), against the Tenant and all persons claiming under it for the recovery by the Landlord of the possession of the hereby demised premises, for which this shall be a sufficient warrant, whereupon, if the Landlord so desires, a writ of habere facias possession may issue forthwith, without any prior writ or proceedings whatsoever, the Tenant hereby releasing and agreeing to release the Landlord from all errors and defects whatsoever in entering such action or judgment, or causing such possessory writ to be issued, or in any proceeding thereon or concerning the same, and hereby agreeing that no writ or error or [fol. 21] objection or exception shall be made or taken thereto; provided, that the Landlord shall first cause to be filed in such action an affidavit made by him or someone on his behalf, setting forth the facts necessary to authorize the entry of such judgment according to the terms of this Lease, of which facts such affidavit shall be conclusive evidence, and if a true copy of this Lease (and of the truth of the copy such affidavit shall be sufficient evidence) shall be annexed to such affidavit, it shall not be necessary to file the original as a warrant of attorney, any rule of court to the contrary notwithstanding. No such determination of this Lease, nor taking or recovering possession of the premises, shall deprive the Landlord of any remedy or action against the Tenant, for rent or for damages for the breach of any covenant herein contained; nor shall the bringing of any such action for rent or breach of covenant nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach, be construed as a waiver of the right to insist upon the forfeiture and obtain possession in the manner hereinabove provided. And, provided, that the rights and liabilities herein given to or imposed upon either of the parties hereto shall extend to the heirs, executors, administrators, successors and assigns, of such party, as though they were in each case named, unless where the assigns are expressly excluded from certain rights; and Tenant covenants to pay the said rent and other charges hereinbefore mentioned, when due and hereby agrees in

consideration of the premises that in case any portion of said rent or other charges shall be collected by distress or other legal process there shall, in addition to the principal, interest and costs of the said debt, be so collected from it the sum of five per centum upon the principal of the said debt as a part of the costs thereof.

And the Tenant hereby expressly gives to and confers upon the Landlord the full right of distress for rent for all monies that shall so become due by virtue of the terms hereof, and it gives to and confers upon the Landlord in like manner all rights, privileges and incidents appertaining [fol. 22] to the right of distress for rent, either at common law or by Statutes of Pensylvania, with full power to seize and sell hereunder all goods and chattels of the Tenant, whether on the demised premises or elsewhere, and hereby, in consideration of the premises, expressly agrees that all of its goods and chattels and personal property, wherever the same may be, shall be fully liable to be seized and sold in distress for the said rent, according to said statutory provisions; and further it is hereby covenanted and agreed that if at any time during the continuance of this Lease goods and chattels or personal property shall, without the permission in writing of the Landlord, be removed from the premises either clandestinely or otherwise without leaving enough of the Tenant's property on the premises to pay at least three months' rent, by sale at public auction on the premises, then the rent for the whole term of this Lease, even if there be no rent due and unpaid at the time, shall thereupon immediately become due and payable, and be liable to be collected under the terms and provisions hereof, and the Landlord may forthwith without further warrant than is herein contained, follow, take possession of, and sell at auction on the premises or elsewhere on three days' notice, served in person or left on the premises, sufficient of such property to satisfy and pay all unpaid rent for the whole term of this Lease as last aforesaid.

8. It is further covenanted and agreed that Tenant may from time to time make such repairs, improvements, additions and alterations in or to the demised premises as Tenant may desire. Said repairs, additions, improvements and alterations to be made at Tenant's own cost and expense; and Landlord covenants and agrees, upon request

at any time, to execute and deliver to Tenant, properly executed, all applications, consents and instruments which may be necessary or required by any and all public or quasi-public authorities permitting and authorizing such repairs, improvements, additions and alterations.

[fol. 23] 9. It is further covenanted and agreed that Tenant will keep the said premises in repair and will replace any plate glass that may be broken from time to time, and upon the expiration of said term will quit and surrender the same in good state and condition, reasonable use and wear thereof, alterations and improvements permitted under this Lease, and damage by fire, casualty, and the elements, excepted; and that all alterations, additions, or improvements which may be made upon the premises except furniture, fixeures and lighting fixtures put in at the expense of Tenant or occupant, shall be and become a part of the demised premises and shall remain upon and be surrendered with the premises as a part thereof at the termination of this lease.

It is understood that Tenant will comply with all the rules, orders, and regulations of the City and State authorities and of the local Board of Fire Underwriters affecting said demised premises so far as such rules, orders and regulations are caused by Tenant, Landlord hereby covenanting that the said demised premises will be delivered to Tenant in safe condition and free from any violations, or orders or notices of violations, of any rules, orders, regulations or requirements of any public or quasi-public authorities or of any Board of Underwriters; it being understood, however, that Tenant will not be required to make any structural changes, or install fire escapes, sprinklers or other fire preventive device, unless the State or Municipal authorities shall require the same to be done.

It is agreed that Tenant will keep the sidewalk in front of said demised premises free from ice and snow.

10. And Landlord further covenants and agrees that upon the request of Tenant, Landlord will at any time, or from time to time, execute all such assents and other papers as may be necessary to enable the occupant of said premises to obtain excise or other licenses in connection

with the business of a retail druggist on the demised premises.

11. In the event that the building, or a part thereof including the demised premises, shall be condemned as un- [fol. 24] safe, the demised premises shall be repaired and restored forwith at the expense of the Tenant.

11a. In the event of the taking of the whole of said premises by reason of any condemnation or the exercise of any power of eminent domain, or like power, this Lease shall terminate; and in the event of the taking or destruction of a portion of said premises by reason of such condemnation, or the exercise of any such power of eminent domain, or like power, whereby the remainder not taken or destroyed has become useless for business purposes, Tenant shall have the option to terminate this lease on written notice to Landlord; but, if the remainder not taken or destroyed shall be useful and fit for business purposes, then the remainder of the premises shall be restored by Landlord to proper condition for use and occupancy, and the rent shall be proportionately reduced for the remainder of the term, the proportionate reduction to be agreed upon between Landlord and Tenant; and in the event of their failure to agree, the amount of such reduction shall be determined by three arbitrators, one to be chosen by Landlord, one to be chosen by Tenant, and the two arbitrators so chosen to select the third arbitrator, and the decision of a majority of said Arbitrators to be binding, final and conclusive, and without right of appeal as to both parties to this Lease.

In the event of the taking of the whole or any part of said premises, Tenant shall take proper steps, by proper proceedings, to recover for the loss of its lease or the damage caused thereto.

12. It is further covenanted and agreed that the occupant of the demised premises may display upon the premises such signs as Tenant may deem advisable.

13. Landlord covenants and agrees as a condition precedent hereto and as a part of the consideration herefor [fol. 25] not to let, use or permit to be used any adjoining buildings owned by Landlord, for the sale, display or ad-

vertising of drugs, medicines, soda, ice cream, soft drinks, candy, cigars, cigarettes, tobacco or smokers' articles, rubber goods, perfumes, toilet preparations, kodacks or kodak supplies, or any of the articles usually dealt in by Louis K. Liggett Company.

14. It is further covenanted and agreed that Landlord or Landlord's duly arthorized representative may at such reasonable times and in such reasonable manner as not to interfere with the business of the occupant thereof, enter to view the said premises. Tenant further agrees that during three months next preceding the expiration of the terms hereby granted, it will at reasonable hours permit Landlord or Landlord's agent to show the premises to persons wishing to lease or purchase same, and Landlord or Landlord's agent shall have the right to place a notice, which will not interfere with the business of the occupant thereof, on the front of said premises offering said premises "To Let" or "For Sale," and Tenant hereby agrees to permit same to remain thereon during said three months without hindrance or molestation.

15. Landlord specifically covenants and warrants that Landlord has full right to lease the demised premises for the term and in the manner herein provided, and agrees to indemnify Tenant for and against any and all loss and damage, of whatsoever kind, that may result to Tenant on account of any failure of or defect in Landlord's title or right to make and execute this lease. Landlord agrees to put Tenant in possession of said premises at the commencement of the term of this Lease.

16. Landlord further covenants and agrees that Tenant upon paying the said rent and other charges herein mentioned and performing the covenants herein contained, shall and may peaceably and quietly have, hold and enjoy said premises for the term aforesaid.

[fol. 26] 17. The covenants and agreements contained in the within lease are binding upon the parties hereto, their heirs, executors, administrators, successors and assigns legal representatives.

18. All notices under any clause, covenant, term or condition of this lease shall be served upon Tenant by mailing

the same by prepaid registered mail to the real estate department of Tenant, at its main office, No. Forty-one East Forty-second Street, New York, New York, or to any subsequent address which Tenant may designate for such purpose, and any notice to the Landlord may be served personally upon Landlord or sent by prepaid registered mail to the Landlord at the address where the last rent was paid, or any subsequent address furnished by Landlord. Date of service of a notice served by mail shall be the date on which notice is deposited in a post office of the U. S. Post Office Department.

19. Notwithstanding anything hereinbefore contained, the rental for the first twelve months of the term of this Lease shall be $41,666.66, payable in equal monthly payments of $3,472.23, on the 15th day of each and every month in advance, the first payment to be made on the 15th day of July, 1927, and for the further rent of all sum or sums which shall be legally assessed upon or become chargeable to said premises for the use of gas or electric light and for all taxes and water rent and other Municipal charges chargeable to said demised premises and for the maintenance of fire insurance and rent insurance as herein provided for; the rental for the remainder of the term of this Lease to be as in this Lease hereinbefore provided.

20. The Landlord shall not be liable for injury or damage to personal property caused by Tenants in said building or resulting from steam, gas, electricity, water, rain or snow, or from pipes, appliances, or plumping works of the same, and it is agreed that throughout the term Tenant will indemnify and save harmless Landlord for and [fol. 27] against any liability, penalties, losses, damages, expenses, causes of actions, suits, claims and judgments arising from injury during said term to persons or property due to or occasioned by any negligence, act or acts, omission or omissions, of Tenant, its employees or agents.

21. It is further understood and agreed that in the event Tenant shall erect a building costing $250,000 or more to complete, to replace the building now existing, and said building shall be erected, or substantially erected by July 15, 1943, Tenant shall have the privilege of renewing and extending this Lease for a further term of twenty-one

years from July 15, 1948, under the same terms, covenants and conditions of the within Lease; it is understood and agreed that Tenant in order to take advantage of such renewal privilege shall serve written notice upon Landlord two (2) years prior to the expiration of this Lease, which notice shall be sent by registered mail addressed to Landlord at the last address where rent was paid and upon giving of such notice by Tenant this Lease shall be and become automatically renewed and extended as therein provided. Provided, however, that Tenant shall not have the right to tear down the present building and erect a new one unless Tenant shall first have furnished to Landlord a bond with surety satisfactory to Landlord providing for the erection and completion of said new building free of all liens of any kind and of all claims and demands whatsoever.

22. It is further covenanted and agreed that Tenant shall keep the building herein demised (as well as any new building that may be erected on the premises) insured against loss by fire in a sum equal to one hundred per centum of the full sound value as shown by an appraisal furnished to Tenant by Landlord thirty days prior to the beginning of this Lease, or from time to time thereafter. The expense of such appraisal is to be borne by Landlord. Such insurance is to be carried in the name of the Landlord, it being understood that the proceeds from such insurance [fol. 28] shall be paid over immediately by Landlord to Tenant to be used by Tenant in repairing the damage caused by such fire, in case of fire. In the event that such insurance money shall be insufficient to repair such damage, the Tenant shall furnish such additional money as may be necessary to restore the premises to substantially its same condition prior to such damage by fire. It is understood by the parties hereto that Tenant shall not be compelled, at any time, to insure the building for more than such sum or sums as are procurable in reputable Insurance Companies.

It is further understood and agreed that in the event the demised premises shall be damaged by fire to an extent exceeding fifty per cent. of the insurable value of the demised premises at any time during the last two years of the term of this lease, the Tenant shall restore the prem-

ises as herein provided, but the term of this Lease, shall, at the option of the Tenant, upon written notice to the Landlord, within thirty days after such fire, be extended under the same terms and conditions as herein provided for a period of two years from and after July 15, 1948. It is further understood and agreed that a representative of Tenant shall take part in and have equal rights with Landlord in adjusting insurance loss with Insurance Companies.

In the event that the building upon the demised premises be damaged or destroyed by fire, such damage or destruction shall not relieve the Tenant of its liability to pay rent during the period that the premises remain untenantable. This contingency shall be covered by rent insurance, payable to Landlord, the premiums on which shall be paid by Tenant.

23. It is further understood and agreed that in case the mortgagee of said premises shall insist that the proceeds of any fire insurance policy upon said building shall not be used for its reparation or restoration, but must be paid to such Mortgagee, then Landlord agrees, either by mortgage upon said premises or otherwise, to provide and furnish for such reparation or restoration a sum equal to the amount of insurance so paid to such Mortgagee.

[fol. 29] It is further covenanted and agreed that this lease is subject to all present and future mortgages affecting said real property in amounts not exceeding in the aggregate, at any one time sixty per centum (60%) of the value of said property and the improvements thereon. In the event Landlord at any time fails to pay any interest due on any mortgage, and any action is brought or threatened to foreclose the same, Tenant shall have the right and privilege to pay said interest and deduct the same from any rent thereafter accruing under this lease.

25. It is understood and agreed that Tenant shall not be liable to pay any of the Landlord's income tax, excess profits tax, inheritance or estate taxes or taxes similar thereto.

26. It is also agreed that Tenant shall have the right, in Tenant's own name, or in name of Landlord but without expense to Landlord, to contest, resist or apply for a

reduction of any taxes levied or imposed on the demised premises, including the right to maintain such proceedings at law or before any taxing authority, as Tenant may deem necessary or advisable during the term of this Lease.

27. It is understood and agreed that contemporaneously with the execution and delivery of this lease deposit has been made by Tenant with Landlord of the sum of Twenty Five Thousand (25,000) Dollars, which sum shall apply as rent for the period from July 15th, 1927, until such time as the entire sum of the said Twenty Five Thousand (25,000) Dollars shall have been so applied.

28. It is agreed and understood that if the Tenant becomes bankrupt, or make an assignment for the benefit of creditors, or is sold out by Sheriff's or Marshal's sale, then the rent for the balance of term shall at once become due and payable, as if by the terms of the Lease it were all payable in advance, and shall be first paid out of the proceeds of said assignment or sale, any law, usage or custom to the contrary notwithstanding.

[fol. 30] In Witness Whereof, the said Landlord has hereunto set his hand and seal, and the said Tenant has caused its corporate seal to be hereunto affixed, duly attested, the day and year first above written.

Sealed and delivered in the presence of: Abraham Israel, Max R. Miller.

Harry E. Kerstine. Louis K. Liggett Company, by Charles McCallum, Vice-President.

Attest: D. J. Monahon, Acting Secretary. (Seal.)

State of New York,
County of New York, ss:

On the 20th day of February 1926, before me, the subscriber, a Notary Public for the State of New York, and residing in New York, personally appeared the above named Harry E. Kerstine, and acknowledged the foregoing lease to be his act and deed, and desired the same might be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

M. A. Crowe, Notary Public. (Seal.)

[fol. 31] State of New York,
County of New York, ss:

On the 20th day of February 1926, before me, the subscriber, a Notary Public in and for the State of New York, personally appeared D. J. Monahon, Acting Secretary of the said Louis K. Liggett Company, who being duly sworn according to law, says that he was personally present at the execution of the foregoing Lease and saw the common or corporate seal of the said Corporation duly affixed thereto; that the seal so affixed thereto is the common or corporate seal of the said Corporation; that the foregoing Lease was duly sealed and delivered by Charles McCallum as Vice President of the said Corporation, as and for the act and deed of the said Corporation, for the uses and purposes therein mentioned, and that the names of this deponent as Acting Secretary and of Charles McCallum as Vice President of the said Corporation, subscribed to the foregoing Lease in attestation of its due execution and delivery, are of their and each of their respective handwritings.

D. J. Monahon.

Sworn to and subscribed before me the day and year aforesaid. M. A. Crowe, Notary Public. (Seal.)

[fol. 32] Exhibit C to Complaint

By this indenture, made this 11th day of May, 1927, by and between William S. Cowen, of Pottsville, Pennsylvania, hereinafter jointly, severally and collectively called Landlord, and Louis K. Liggett Company, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with offices at Forty-one East Forty-second Street, New York, New York, hereinafter called Tenant, in consideration of one dollar to each in hand paid, receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter contained, the parties hereto do respectively covenant and agree as follows:

First. Landlord does hereby lease unto Tenant and Tenant hereby hires from Landlord the entire building, known as 13 South Center Street, Pottsville, Pennsylvania, being three stories high and with a basement, all fronting twenty-two feet (22') on South Center Street and extending back, of uniform width, eighty feet (80'), a portion of which is now occupied by Landlord and used as a drug store; also the entire parcel or parcels of land whereon said building is situated, and full right of ingress and egress to and through the alley space to the rear thereof, together with the appurtenances thereunto belonging, for the term hereinafter provided.

Second. The term of this lease shall be Ten (10) years, beginning May Nineteenth, 1927, and ending May Thirty-first, 1937, and the Tenant shall pay a rental of Nine Thousand Dollars ($9,000.00) per annum (called the base rent), plus such additional rents, if any, as may accrue and become payable in the manner hereinafter provided. Said base rent shall be payable in equal monthly instalments in advance, the first payment hereunder to be payable May 19th, 1927, for the period May 19th, 1927, to May 31st, 1927.

[fol. 33] Third. It is further covenanted and agreed that Tenant may assign this lease or underlet the whole or any part of the demised premises to United Drug Company, or any subsidiary or associate, or to any other person or corporation for any lawful purpose, provided Tenant shall be and remain liable to pay the rent as hereinabove provided.

Fourth. It is further covenanted and agreed that Tenant may from time to time make such repairs, improvements, additions and alterations in or to the demised premises as Tenant may desire, said repairs, improvements, additions and alterations, however, to be at Tenant's own cost and expense; and Landlord covenants and agrees, upon request at any time, to deliver to Tenant, properly executed, all applications, consents and instruments which may be necessary or required by any and all public or quasi-public authorities permitting and authorizing such repairs, improvements, additions and alterations.

Sixth. Landlord agrees that upon the request of Tenant, Landlord will at any time, or from time to time, deliver to Tenant, properly executed, all such assents and other papers as may be necessary to enable the occupant of said premises to obtain excise or other licenses in connection with the business of a retail druggist on the demised premises.

Seventh. It is further covenanted and agreed that in case the demised premises shall be damaged or destroyed by fire or the elements this lease shall not terminate, but the premises shall be repaired, restored or rebuilt as speedily as may be reasonably possible by and at the expense of Landlord, and, if the damage shall not be such as to render the premises untenantable, then pending repairs the rent, and all other payments by Tenant under this lease, if any, shall be justly and proportionately reduced according to the nature and extent of the injury, and in case the demised premises shall be rendered untenantable the rent and all other payments by Tenant, if any, shall cease until the premises [fol. 34] shall have been completely repaired, restored or rebuilt by Landlord as aforesaid, and at the completion of such repairs, restoration or rebuilding, rent, and other payments by Tenant, if any, shall begin again and continue throughout the remainder of the term of this lease. In the event that the building or a part thereof shall be condemned as unsafe, the demised premises shall be repaired and restored forthwith at the expense of Landlord, and a just proportion of the rent and other payments by Tenant under this lease, if any, shall be suspended and abated until the demised premises shall have been put in safe and proper condition for use and occupancy. In the event of the taking, in the exercise of the power of eminent domain, or like power, of the whole or any portion of the demised premises, rentals and all payments by and obligations of Tenant under this lease shall cease, and any unearned rent paid or other payments made in advance, if any, shall be refunded to Tenant; provided, however, that if less than the whole of the demised premises shall be taken, Tenant shall, at its option, be entitled, upon notice to Landlord, to have the remainder of the premises restored by Landlord to proper condition for use and occu-

pancy, and to an opportionment of the rent, and other payments, if any, for the balance of the term of this lease.

Eighth. It is further covenanted and agreed that the occupants of the demised premises may display upon the premises such signs as Tenant may deem advisable.

Ninth. Landlord covenants and agrees not to let, use or permit to be used any other portion of the building or buildings of which the demised premises form a part, or adjoining buildings owned or controlled by Landlord, for the sale, display, or advertising of drugs, medicines, soda, ice cream, soft drinks, candy, cigars, cigarettes, tobacco or smoker's articles, rubber goods, perfumes, toilet preparations, kodaks, kodak supplies, or any of the articles usually dealt in by Tenant.

[fol. 35] Tenth. If the rent above reserved, or any part thereof, shall be unpaid or in arrears and shall so remain for a period of thirty (30) days after receipt of notice from Landlord, it shall be lawful for Landlord to begin action for the recovery of said rent, or by summary proceedings or otherwise, to enter into and upon the said demised premises, without being liable to indictment or prosecution or damages therefor, and to remove any and all persons and property therefrom, and the same to have again, repossess and enjoy as of Landlord's first and former estate, anything in this lease to the contrary notwithstanding. In the event Tenant shall be adjudicated bankrupt or insolvent according to law, or if any assignment shall be made for the benefit of creditors, or if a receiver be appointed for Tenant in insolvency proceedings and not be discharged within sixty days, Landlord may at Landlord's option terminate this lease and eject and remove from the premises any person or persons claiming under said Tenant or otherwise, and Tenant hereby agrees that in either of the events as herein set forth, all its right under said lease shall cease and terminate.

Eleventh. It is further covenanted and agreed that Landlord, or Landlord's duly authorized representative, may at such reasonable times and in such reasonable manner as not to interfere with the business of the occupant thereof, enter to view the said premises. Tenant further

agrees that during three months next preceding the expiration of the term hereby granted, it will at reasonable hours permit Landlord or Landlord's agent to show the premises to persons wishing to lease or purchase same, and Landlord or Landlord's agent shall have the right to place a notice, which will not interfere with the business of the occupant thereof, on the front of said premises offering said premises "To Let" or "For Sale," and Tenant hereby agrees to permit same to remain thereon during said three months without hindrance or molestation.

Twelfth. It is further covenanted and agreed that Tenant will keep the interior of the ground floor and base-[fol. 36] ment of said premises in repair and will replace any plate glass that may be broken from time to time in such portion of the premises, and upon the expiration of the said term will quit and surrender the same in good state and condition, reasonable use and wear thereof, alterations and improvements permitted under this lease, and damage by fire, casualty and the elements, excepted; and that all alterations, additions, or improvements which may be made by either of the parties hereto upon the premises, except furniture, fixtures, radiators, lighting fixtures, and heating equipment put in at the expense of Tenant or occupant, shall be and become a part of the demised premises and shall remain upon and be surrendered with the premises as a part thereof at the termination of this lease. It is understood that Tenant will comply with all the rules, orders and regulations of the City and State authorities and of the local Board of Fire Underwriters affecting said demised premises so far as such rules, order and regulations are caused by Tenant, Landlord hereby covenanting that said demised premises will be delivered to Tenant free for any orders of any public or quasi-public authorities, and free from and not subject to any violations, or notices of violations of any laws, rules, orders, regulations or requirements of any Federal, State, County or Municipal Government, or any department thereof or of any public or quasi-public authorities of any Board of Underwriters; it being understood however, that Tenant will not be required to make any structural changes, or install fire escapes, sprinklers or other fire preventive device in any portion of the premises or make any alterations, repairs or improvements of any character outside

of the basement and ground floor rooms thereof. It is agreed that Tenant will keep the sidewalk in front of said demised premises free from ice and snow; and that Landlord will keep the sewer and sewer connections in thorough repair throughout the term hereof, and shall make all repairs and replacements to the demised premises and appurtenances not specifically agreed to be made by Tenant. Landlord also will paint the hallways of the said premises [fol. 37] at once and thereafter, from time to time, the upper portions of said premises as needed, in colors and designs and with quality of workmanship reasonably suitable to Tenant. If at any time it becomes reasonably necessary for Tenant, after notice to Landlord, to make any repairs, or do any painting or decorating, to any portion of the demised premises other than the interior of said basement and ground floor rooms, as aforesaid, then the Landlord will fully reimburse the Tenant for any and all expense borne in connection therewith, or, at Tenant's option, any or all of said amounts may be deducted from rents.

Thirteenth. Tenant shall have the right to own and operate a retail drug store in the ground floor and basement portion of the demised premises during the term hereof and any renewal of said term.

Fourteenth. It is further covenanted and agreed that during the thirteenth month of the leasehold term hereby created, the Tenant shall render to Landlord by mail an accounting for the purpose of determining the additional rentals (if any) for the first twelve months of the term. Such accounting shall show the total amount of all gross sales made by the drug store in said premises during the first twelve months of the term; but there shall not be considered as gross sales or included in said accounting any receipts from telephone calls, weighing machines, parcel lockers, window lettings or post office or sub-station thereof, or any receipts from merchandise returned and to which there was no actual sale. If the total of such gross sales for said twelve months period as shown in said statement, be an amount in excess of One Hundred Thirty Thousand Dollars ($130,000.00), then a sum equal to seven per centum (7%) of all of such excess will be remitted by Tenant to Landlord with the statement as additional rent

for said first twelve months of the term. Annual statements shall be rendered in like manner for each and every successive twelve months period of the term. Each such [fol. 38] statement, with the additional rent thereby shown to be due (if any), shall be sent by the Tenant to the Landlord during the month next after the annual period to which it relates.

Fifteenth. It is further covenanted and agreed that should Tenant at any time during the term of this lease desire to discontinue the operation of tenant's store in the demised premises, Tenant shall give to Landlord notice by registered mail of Tenant's desire to so discontinue the operation of said store and Landlord shall have sixty (60) days from the date of said notice in which to elect to receive back from the Tenant the demised premises and to cancel this lease as of the next succeeding December thirty-first. In the event that Landlord decides to so cancel this lease Landlord shall so notify Tenant in writing by registered mail within said sixty (60) days, and in such event this lease shall cease and become terminated and Tenant's liability to pay rent and perform the terms, conditions and covenants herein shall cease and come to an end on the next succeeding December thirty-first. In the event that Tenant shall not receive notice from Landlord within sixty (60) days from the date of Tenant's said notice of Landlord's intention so to cancel this lease, then Tenant shall thereafter have the right to sublet the whole or any portion of the demised premises for any lawful purpose and the entire rental payable thereafter shall be the sum of Nine Thousand Dollars ($9,000.00) per annum, payable in equal monthly installments in advance for the unexpired portion of the term, and the reservation of rents on a percentage basis and all terms, covenants or conditions in respect thereto shall be without force or effect as to any of said unexpired portion of the term.

Sixteenth. It is further covenanted and agreed that Tenant, for each year of the term after 1927, will pay as additional rent an amount equal to any increase in real estate taxes accruing and payable upon the demised prop- [fol. 39] erty for any such year over and above all such taxes accruing and payable for 1927, a pro rata portion to

be paid for the last fractional year of the term; but Tenant shall pey no income, excess profits, inheritance, estate or similar taxes or any sum based thereon. The Tenant shall have the right to take proceedings in the Landlord's or Tenant's name protesting against any real estate tax or taxes deemed unfair or illegal. Any such amounts shall be due upon reasonable demand from Landlord accompanied by receipted tax bills or other satisfactory proof of amounts paid.

Seventeenth. It is further covenanted and agreed that Tenant shall have the right and power to renew and extend this lease for a further term of ten (10) years from May thirty-first, 1937, under the same terms, covenants and conditions as herein stipulated. In the event Tenant desires to exercise such renewal right, Tenant, on or before the first day of December, 1936, will mail Landlord notice of its election to renew and upon the mailing of such notice, in the manner herein elsewhere provided, this lease shall be automatically renewed and extended for the period of ten (10) years, beginning June 1st, 1937, and ending May 31st, 1947, upon the rents, covenants and conditions of the original term.

Eighteenth. Acceptance by the Landlord of any of the said rent at any time after the same shall become due, after default has been made in the payment thereof, or any failure to enforce any of the rights herein reserved to the party of the first part, or any of the penalties, forfeitures or conditions herein contained, shall not in anywise be considered a waiver of the right to enforce the same at any time without any notice whatsoever, and any attempt to collect the rent by one proceeding shall not be considered as a waiver of the right to collect the same by any other proceeding, but all of the rights of the Landlord, and all forfeitures, penalties and conditions may be enforced together or successively at the option of the Landlord.

[fol. 40] Nineteenth. Tenant hereby waives the usual notice to quit, and agrees to surrender said premises at the expiration of said term, or the termination of this lease without any notice other than expressly provided herein.

And upon any proceeding instituted for the recovery of said rent, either by distress or otherwise, Tenant waives the benefit of all appraisement, stay and exemption laws, the right of inquisition on real estate, and all bankruptcy or insolvency laws now in force or hereafter passed.

Twentieth. Upon the breach of any of the covenants or agreements of this lease and failure after thirty (30) days' notice, as herein elsewhere provided, to correct the same, or upon its expiration the Prothonotary or any attorney as aforesaid is hereby authorized to confess judgment in an amicable action of ejectment against the said Tenant and in favor of the said Landlord for the premises herein described, and to direct the immediate issuing of a writ of habere facias possessionem with clause of fieri facias for costs, waiving all irregularities, without notice and without asking leave of court.

Landlord specifically covenants and warrants that Landlord has full right to lease the demised premises for the term and in the manner herein provided, and agrees to indemnify Tenant for and against any and all loss and damage, of whatsoever kind, that may result to Tenant on account of any failure of or defect in Landlord's title or right to make and execute this lease. Landlord agrees to put Tenant in possession of said premises at the commencement of the term of this lease.

Landlord further covenants and agrees that Tenant, upon paying the said rent and performing the covenants herein contained, shall and may peaceably and quietly have, hold and enjoy said premises for the term aforesaid.

The covenants and agreements contained in the within lease are binding upon the parties hereto, their heirs, executors, administrators, successors, assigns and legal representatives.

[fol. 41] All notices under any clause, covenant, term or condition of this lease shall be served upon Tenant by mailing the same by prepaid registered mail to the Real Estate Department of Tenant, at its main office, Forty-one East Forty-second Street, New York, New York, or to any subsequent address which Tenant may designate for such purpose, and any notice to the Landlord may be served personally upon Landlord or sent by prepaid registered mail

to the Landlord at the address where the last rent was paid, or any subsequent address furnished by Landlord. Date of service of a notice served by mail shall be the date on which such notice is deposited in a post office of the U. S. Post Office Department.

In Witness Whereof, the above parties have hereunto set their hands and seals, this — day of May, 1927.

William S. Cowen. Louis K. Liggett Company, by Charles McCallum, Vice-President. (L. S.)

Witness: E. Ruth Gibson, C. C. Mason, Asst. Secretary.

COMMONWEALTH OF NEW YORK,
County of New York, ss:

On the 11 day of May, A. D., 1927, before me, the subscriber, a Notary Public for New York County, New York, residing at 217 West 17th St., New York City, personally appeared William S. Cowen and in due form of law acknowledged the foregoing instrument to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

E. Ruth Gibson, Notary Public, N. Y. County, No. 97. New York County Register's No. 9016. Commission expires March 30, 1929.

[fol. 42] STATE OF NEW YORK,
County of New York, ss:

Be it remembered that on the 11 day of May, A. D. 1927, before me, E. Ruth Gibson, a Notary Public, personally came C. C. Mason who, being duly sworn according to law, doth depose and say that he was personally present and did see the common or corporate seal of the above-named Louis K. Liggett Company affixed to the foregoing instrument. That the seal so affixed is the common or corporate seal of the said Louis K. Liggett Company, and was so affixed by the authority of the said corporation as the act and deed thereof. That the above named Charles McCallum is Vice-President of the said corporation, and did sign the said instrument as such in the presence of this deponent.

That this deponent is the Asst. Secretary of the said corporation, and that the name of this deponent, above signed in attestation of the due execution of the said instrument, as of this deponent's own proper handwriting.

C. C. Mason, Asst. Secretary.

Sworn to and subscribed before me. E. Ruth Gibson, Notary Public, N. Y. County, No. 97. New York County Register's No. 9016. Commission expires March 30, 1929.

[fol. 43] EXHIBIT D TO COMPLAINT

This Agreement, made this 11th day of May, 1927, by and between William S. Cowen, of Pottsville, Pennsylvania, party of the first part, hereinafter referred to as Seller, and Louis K. Liggett Company, a Massachusetts corporation, with offices at 41 East Forty-second Street, New York City, New York, hereinafter referred to as Purchaser, Witnesseth:

Whereas, Seller owns and operates a retail drug business in the city of Pottsville, Pennsylvania, in the premises known as 13 South Center Street, and is desirous of selling to Purchaser, and Purchaser is willing to buy, the property hereinafter mentioned, upon the terms and conditions hereinafter set forth.

Now, Therefore, in consideration of the sum of One Dollar ($1.00) to each of the parties hereto in hand paid, receipt whereof is hereby acknowledged, and of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

First. Seller agrees to sell, transfer, convey and deliver to Purchaser, and Purchaser agrees to buy and pay for, as hereinafter stated, all of the saleable merchandise and stock in trade (including drugs, medicines, chemicals, toilet articles, stationery, and goods and wares of every kind), and the furniture, fixtures, equipment, containers, utensils, cash registers, prescription files and records, and chattels and property of every nature and description contained in

the said premises of Seller, or in any stockrooms or warehouses operated or maintained by Seller, and all awnings and other fixtures, equipment and improvements of Seller attached to or connected with said premises, and all property (except as hereinafter stated) of every kind, wheresoever situate, connected with the business of Seller, including trucks, automobiles, bicycles or vehicles; together [fol. 44] with the good will of the business of Seller, and Seller's Rexall Agency or subagency.

Second. Purchaser shall, at the close of business on the 18th day of May, 1927, or as soon thereafter as may be convenient to Purchaser in the exercise of reasonable diligence, take a full and detailed inventory of the saleable merchandise and stock in trade of Seller; and upon completion of such inventory, Purchaser shall price the merchandise shown by such inventory at the same costs and by the same methods as are used by Purchaser in pricing inventories of Purchaser's own stores.

Third. The purchase price of the property hereby sold and purchased shall be Nine Thousand Dollars ($9,000.00), plus a sum equal to the total amount of the saleable merchandise shown by the inventory when taken and priced as aforesaid.

Fourth. In computing the amount of said inventory there shall not be taken into consideration any merchandise or stock in trade which is damaged or deteriorated, or which is reasonably to be deemed unsaleable from any cause, nor any labels, boxes or containers having thereon Seller's name, nor any merchandise put up or sold under the label of Seller. In case any question shall arise as to whether any particular merchandise is unsaleable merchandise, Purchaser and seller shall each appoint a representative and these representatives shall determine such question and should any difference or disagreement arise between said two representatives they shall select a competent third person and the three shall act as arbitrators and the decision of two of such arbitrators shall be final and conclusive as to whether such merchandise is unsaleable merchandise or not.

Fifth. Payment of said purchase price shall be made as follows: The sum of Nine Thousand Dollars ($9,000.00) at the beginning of taking of said inventory, and the balance on completion of pricing and ascertaining the total of said [fol. 45] inventory, which shall not be later than sixty (60) days after the date of beginning of taking thereof.

Sixth. (a) It is further understood and agreed that there is not hereby sold or conveyed any cash, securities or accounts or bills receivable of the Seller; and that the Seller shall be responsible for all bills, debts or obligations due by the said Seller, or claims or demands against him; and Purchaser does not assume and shall not be responsible or liable for any such bills, debts, obligations, claims or demands.

(b) It is further agreed and understood that there shall not be included within the sale herein provided for, any intoxicating liquors of any kind.

Seventh. The Seller agrees that the sale hereby contracted for shall be carried out and performed in accordance with the provisions of the statutes of the State of Pennsylvania governing the sale or assignment of merchandise in bulk, and that it will perform all acts and things necessary on its part to comply with such bulk sales law, and will furnish all lists of creditors, affidavits, data and information (properly certified and verified) that may be necessary, incidental or desirable in complying with such bulk sales law; and that not later than May 15, 1927, Seller will pay all his creditors in full and deliver to Purchaser, in satisfactory form, an affidavit that Seller has no creditors, the delivery of such affidavit being a condition precedent hereto.

Eighth. In the event any creditor, or any other person, firm or corporation, shall obtain from any court any process, injunction, restraining order or other decree intended to prevent or interfere with the carrying out of the provisions of this agreement, or any of them, or if such action shall have been threatened, or shall seem reasonably imminent to the Purchaser, it may, in its judgment, withhold payment of any amount due under this agreement until such order, process, injunction or decree shall have been

vacated, or until the likelihood of any proceedings by any [fol. 46] party to prevent the carrying out of the provisions of this agreement shall have been disposed of to the satisfaction of the Purchaser, but the withholding of any such payment shall not be unreasonable or for an unreasonable period. In the event any creditor shall present any bill or claim against Seller to Purchaser, or notify Purchaser thereof, Seller will immediately pay or dispose of same, and until the same is paid or disposed of, Purchaser may withhold from any payment due Seller an amount equal to the amount of such bill or claim.

Ninth. It is understood and agreed that the Seller may carry on its business and may make sales out of the stock of merchandise in the regular course of business, and not otherwise, making replacements of said stock of drugs and merchandise only in the ordinary and usual course of the conduct of the business of the Seller, until the close of business on the 18th day of May, 1927.

Tenth. The sale and transfer contemplated hereby shall be effective as of the date of beginning of taking of inventory referred to in the Second paragraph hereof, and shall apply to and cover the merchandise in said store at beginning of taking of such inventory, and the furniture, fixtures and equipment in said premises at the time of signing this contract, and/or as heretofore exhibited to Purchaser or its representatives, with all additions thereto. All of said property shall be at Seller's risk as to damage by fire or otherwise prior to delivery to Purchaser.

Eleventh. Delivery of the tangible property hereby purchased and sold shall be made to Purchaser by Seller at the time and date fixed for the beginning of taking of inventory, as hereinabove stated, and this instrument shall constitute a full and complete assignment and transfer to Purchaser of all of the property and property interests, tangible and intangible, hereby agreed to be sold and purchased, as of date and time of delivery of such tangible [fol. 47] property to Purchaser; and Seller does hereby transfer, assign, convey and set over the same unto Purchaser as of the said date and time.

Twelfth. Seller hereby covenants and warrants that it has full and complete title to all of the merchandise, furniture, fixtures, chattels, good will and other property or property interests hereby sold; that said merchandise, furniture, fixtures, chattels, good will and other property or property interests hereby conveyed are free and clear of liens or incumbrances of any kind, and shall be delivered to Purchaser free and clear of all liens, claims, charges, mortgages or incumbrances of any kind whatsoever; and Seller warrants unto Purchaser his right to sell and convey the said property interests, and does hereby covenant and agree to indemnify and hold harmless the Purchaser against any incumbrances, liens, claims, debts or demands held by or due to any creditor of the Seller.

Thirteenth. The Seller further agrees that he will execute and deliver unto the Purchaser any and all other and further instruments, contracts, deeds, assignments or bills of sale that may be required by said Purchaser, in form satisfactory to said Purchaser, assigning, conveying and transferring unto said Purchaser the saleable merchandise, furniture, and fixtures, good will and all other property or property interests hereby conveyed or agreed to be sold or conveyed.

Fifteenth. In further consideration of the payments to be made by the Purchaser, the Seller agrees that he will not directly or indirectly engage in, transact, carry on or conduct any retail drug store or drug business in the city of Pottsville, Pennsylvania, for a period of ten (10) years from and after the date of this agreement, and will not be or become connected with any such business as partner, stockholder, lender, or otherwise in said territory during said period.

[fol. 48] In Witness Whereof, the parties hereto have duly caused this instrument to be executed under their signatures and seals the day and year first above written.

William C. Cowen. (L. S.) Louis K. Liggett Company, by Charles McCallum, Vice-President.

Witness: E. Ruth Gibson. C. C. Mason, Asst. Secretary. (Seal.)

COMMONWEALTH OF NEW YORK,
County of New York, ss:

On the 11th day of May, A. D. 1927, before me, the subscriber, a Notary Public for New York County, New York, residing at 217 W. 13th St., N. Y., personally appeared William S. Cowen and in due form of law acknowledged the foregoing instrument to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

E. Ruth Gibson, Notary Public, N. Y. County, No. 97. New York County Register's No. 9016. Commission expires March 30, 1929. (Seal.)

[fol. 49] STATE OF NEW YORK,
County of New York, ss:

Be it remembered that on the 11 day of May, A. D. 1927, before me, E. Ruth Gibson, a Notary Public, personally came C. C. Mason, who, being duly sworn according to law, doth depose and say that he was personally present and did see the common or corporate seal of the above named Louis K. Liggett Company affixed to the foregoing instrument. That the seal so affixed is the common or corporate seal of the said Louis K. Liggett Company, and was so affixed by the authority of the said corporation as the act and deed thereof. That the above named Charles McCallum is Vice-President of the said corporation, and did sign the said instrument as such in the presence of this deponent. That this deponent is the Secretary of the said corporation, and that the name of this deponent, above signed in attestation of the due execution of the said instrument, is of this deponent's own proper handwriting.

C. C. Mason, Asst. Secretary.

Sworn to and subscribed before me. E. Ruth Gibson, Notary Public, N. Y. County, No. 97. New York County Register's No. 9016. Commission expires March 30, 1929. (Seal.)

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

INJUNCTION AFFIDAVIT—Filed June 10, 1927

UNITED STATES OF AMERICA,
State of New York,
County of New York, ss:

William C. Watt, being first duly sworn according to law, deposes and says:

1. That he is the Vice-President of the Louis K. Liggett Company, the plaintiff in the above-entitled action; that he is authorized to make this injunction affidavit on its be-[fol. 51] half and now so does; and that the matters herein averred, insofar as they may be within affiant's own knowledge, are true and correct, and insofar as they may be upon information and belief, affiant believes them to be true and correct.

2. The above-named plaintiff is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and engaged in the business of owing and carrying on a retail drug business within the several states of the United States of America. Its certificate of incorporation was granted on November 12, 1909. The plaintiff has since March 1, 1916, been duly registered and qualified to carry on and has actually carried on a retail drug business in the State of Pennsylvania.

3. The retail drug business of the plaintiff within the State of Pennsylvania was prior to the passage of the Pennsylvania Supplemental Act of May 13, 1927, and still is carried on at twenty-eight retail drug stores owned by it upon premises leased by it and situate at the respective addresses set forth in paragraph 7 of the bill of complaint filed in this cause. Said drug stores are under the management and personal supervision of pharmacists duly registered as such under the Pennsylvania Act of May 17, 1917, P. L. 298—each of said pharmacists having personal supervision of not more than one of said stories—; and are duly registered with and have permits issued by the Pennsylvania Board of Pharmacy under the Pennsylvania Sup-

plemental Act of May 26, 1921, P. L. 1172. The lease on the premises 1541 Chestnut Street, Philadelphia, Pennsylvania, will expire on August 31, 1927; the lease on premises 500 Market Street, Chester, Pennsylvania will expire on January 31, 1928; the lease on the premises 14 So. 52d St., Philadelphia, Pennsylvania, will expire on March 31, 1928; the lease on the premises 3701 Germantown Avenue, Philadelphia, Pennsylvania, will expire on June 30, 1928; the lease on the premises 839 Market Street, Philadelphia, [fol. 52] Pennsylvania, will expire on December 31, 1928; the lease on the premises 25 So. Main Street, Wilkes-Barre, Pennsylvania, will expire on March 31, 1929; the lease on the premises 300 So. Broad Street, Philadelphia, Pennsylvania, will expire on October 31, 1929; and the remaining twenty-one existing leases of the plaintiff will expire on various dates after January 1, 1930.

4. On February 20, 1926, the plaintiff leased from Harry E. Kerstine the premises 901-03 Market Street, Philadelphia, Pennsylvania, for a term of twenty-one years, beginning July 15, 1927, and ending July 14, 1948. A full true and correct copy of said indenture of lease is attached to and made a part of the bill of complaint filed in this cause, marked Exhibit B. The plaintiff intended at the time it entered into the above-mentioned lease and still intends to own and carry on a retail drug business on the said demised premises under the title "Pharmacy" or "Drug Store." Such business will include the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs; will be under the management and personal supervision of pharmacists duly registered as such under the Act of May 17, 1917, P. L. 208, and but for the action of the Pennsylvania Board of Pharmacy hereinafter set forth, will be registered with and licensed by the Pennsylvania Board of Pharmacy under the Supplemental Act of May 26, 1921, P. L. 1172.

5. On May 11, 1927, the plaintiff leased from William S. Cowen the premises 13 So. Center Street, Pottsville, Pennsylvania, for a term of ten years beginning May 19, 1927, and ending May 31, 1937. A full, true and correct

copy of said lease is attached to and made a part of the bill of complaint filed in this cause, marked Exhibit C. At the same time, the plaintiff agreed to purchase the retail drug business owned and carried on by the said William S. Cowen on the said demised premises together [fol. 53] with all saleable merchandise, stock in trade, etc. A full, true and correct copy of the agreement of sale is attached to and made a part of the bill of complaint filed in this cause marked Exhibit D. The plaintiff intended at the time it entered into the above-mentioned lease and agreement of sale and still intends to own and carry on a similar retail drug business on the said demised premises under the title "Pharmacy" or Drug Store." Such business will also be under the management and personal supervision of pharmacists duly registered as such under the Act of May 17, 1917, P. L. 208, and but for the action of the Pennsylvania Board of Pharmacy hereinafter set forth, will be registered with and licensed by the Pennsylvania Board of Pharmacy under the Supplemental Act of May 26, 1921, P. L., 1172.

6. The retail drug business of the plaintiff within the State of Pennsylvania has since March 1, 1916, shown a continuous and substantial growth and expansion, involving an investment of approximately $480,000; and in consonance with such growth and expansion, the plaintiff is contemplating the acquisition by purchase or lease of further sites in Pennsylvania for "Pharmacies" or "Drug Stores" to be owned and carried on by it in order to meet the growing demands of its business in that State. Such other additional "Pharmacies" or "Drug Stores" will likewise be under the mangement and personal supervision of pharmacists duly registered under the Act of May 17, 1917, P. L. 208, and but for the action of the Pennsylvania Board of Pharmacy hereinafter set forth, will be registered with and licensed by the Pennsylvania Board of Pharmacy under the Supplemental Act of May 26, 1921, P. L. 1172.

7. On May 13, 1927, the Governor of the Commonwealth of Pennsylvania approved a Supplement to the Act of May 17, 1917, which provides that no other or additional pharmacies or drug stores shall be established, owned or conducted by a corporation organized and existing under the

laws of any other state of the United States and authorized to do business in the State of Pennsylvania unless all the [fol. 54] members or partners thereof are registered pharmacists; and declares that any corporation violating the provisions hereof shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine of not more than $100 each day any such pharmacy or drug store is owned contrary to the provisions of this act. A full, true and correct copy of said Supplement is attached to and made a part of the bill of complaint filed in this case marked Exhibit A.

8. The capital stock of the plaintiff issued and outstanding on May 13, 1927, consists of 98,500 shares of common stock of the par value of $100 per share and 5 shares of preferred stock of $100 per share making a total of outstanding common and preferred stock of $9,850,500. The common stock is all owned by the United Drug Company, a Massachusetts corporation; and the 5 shares of preferred stock all owned by S. S. McCully, a registered pharmacist of Rhode Island and Massachusetts and a district manager for the plaintiff residing in Providence, Rhode Island.

The Board of Directors of the plaintiff consists of ten members, as follows: Louis K. Liggett, Chairman of the Board; George M. Gales, President; John S. Alley, W. C. Watt,Charles McCallum, and W. J. Rash, all of whom are Vice Presidents; L. O. Schmidt, Treasurer; B. H. Badanes, Secretary; F. L. Tompkins; and Roy M. Sterne. Of the foregoing officers and directors, John S. Alley is a registered pharmacist of Massachusetts; W. J. Rash is a registered pharmacist of New York; B. H. Badanes is a registered pharmacist of Massachusetts; and F. L. Tompkins is a registered pharmacist of Rhode Island. No other officer or director of the plaintiff is a registered pharmacist.

9. Affiant is informed by plaintiff's counsel, believes and therefore avers that under the terms of the Supplement of May 13, 1927, it will be unlawful for the plaintiff to own and carry on a retail drug business on the demised prem- [fol. 55] ises in Philadelphia and Pottsville, Pennsylvania, as mentioned in paragraphs 4 and 5 of this injunction affidavit; that it will be unlawful for the plaintiff to own and

carry on other or additional pharmacies and drug stores in Pennsylvania in order to meet the growing demands of its business in that State; and that it will be unlawful to own and carry on the twenty-eight retail drug stores now owned by it and referred to in paragraph 3 of this injunction affidavit, if new leases for such stores cannot be obtained upon the expiration of the respective terms provided for in the existing leases thereof, the first lease of which will expire on August 31, 1927.

10. A compliance with provisions of the Supplement of May 13, 1927, by the plaintiff will destroy existing property and contract rights under the leases and agreement of sale mentioned in paragraphs 4 and 5 hereof in that the plaintiff may not lawfully own and carry on a retail drug business on the demised premises; will retard all growth and expansion of the plaintiff's business in the State of Pennsylvania in that the plaintiff may not lawfully own and carry on other and additional pharmacies and drug stores; and may utterly wipe out and in effect confiscate the entire business of the plaintiff in the State of Pennsylvania with its investment of approximately $480,000 by making unlawful the continuation of that business at sites other than those now leased. The necessary effect of said Supplement will be immediate irreparable injury to the plaintiff's business within the State of Pennsylvania, which resultant injury may seriously affect and impair the retail drug business and good will of the plaintiff in the several states of the United States.

11. Under the terms of the Supplemental Act of May 26, 1921, P. L. 1172, it will be the right of the defendants Charles C. Campbell, Charles K. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, constituting the Pennsylvania Board of Pharmacy, to sus- [fol. 56] pend or revoke the licenses issued to the plaintiff for the twenty-eight retail pharmacies or drug stores stores now owned by the plaintiff upon the plaintiff's conviction for a second or any subsequent violation of the Supplement of May 13, 1927, upon the ground that the plaintiff owns and carries on a pharmacy or drug store, when all the members or partners of the plaintiff corporation are not registered pharmacists.

12. Under the terms of the Supplement of May 13, 1927, it will be the duty of the defendants Thomas J. Baldrige, Attorney General and Charles Edwin Fox and M. H. Spicker, respective Districts Attorneys for the Counties of Philadelphia and Schuylkill, to prosecute the plaintiff as soon as the plaintiff owns and carries on pharmacies or drug stores upon the demised premises mentioned in paragraphs 4 and 5 hereof, or whenever the plaintiff owns and carries on other or additional pharmacies and drug stores in Pennsylvania, or whenever the plaintiff owns and carries on the now existing twenty-eight pharmacies and drug stores on sites other than those now leased by the plaintiff.

13. Affiant is informed by plaintiff's counsel, believes and therefore avers that the Supplement of May 13, 1927, is unconstitutional in that it deprives the plaintiff of its property without due process of law and denies to the plaintiff the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States and also in that it impairs the obligations of the plaintiff's contracts in violation of Section 10 of Article I of the Constitution of the United States.

14. Under the terms of the Supplement of May 3, 1927, it will be the duty of the defendants Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, constituting the Pennsylvania Board of Pharmacy, to refuse and deny the plaintiff a license to own and carry on a retail drug business on the demised premises in the Cities of Philadelphia and Pottsville, Pennsylvania, mentioned in paragraphs 4 and 5 [fol. 57] hereof under the title "Pharmcay" or "Drug Store" because such "Pharmacy" or "Drug Store" is owned by a corporation, all the members or partners of which are not registered pharmacists.

15. Despite the unconstitutionality of the Supplement of May 13, 1927, affiant believes and therefore avers that the defendants in performance of their official duties as set forth in paragraphs 11, 12 and 14 hereof intend to prosecute the plaintiff, to deny and refuse licenses to the plaintiff and to suspend or revoke its license in the manner alleged in said paragraphs, unless this Court or some other competent court shall in the meantime declare the unconstitu-

tionality of said Supplement. The performance by the defendants of their official duties as aforesaid must necessarily subject the plaintiff to oppressive penalties and a multiplicity of criminal suits; and also must necessarily cause irreparable damage to existing property and contract rights of the plaintiff.

16. The plaintiff has at all times complied with and still intends to comply with the provisions of the Act of May 17, 1917, P. L. 208, and the Supplemental Act of May 26, 1921, P. L. 1172, in the ownership and carrying on of its retail drug business within the State of Pennsylvania; but cannot comply with the provisions of the Supplement of May 13, 1927, that all the members and partners of the plaintiff corporation shall be registered pharmacists.

All of the foregoing facts affiant avers the plaintiff expects to prove at the hearing in this cause.

William C. Watt.

Sworn to and subscribed before me, a Notary Public, this third day of June, A. D. 1927. Margaret A. Crowe, Notary Public, Queens County, No. 315. Notary Public, New York County, Clerk's No. 557. New York County Register's No. 9398. Commission expires March 30, 1929. (Seal.)

[Certificate of Court Clerk affixed.]

[fol. 58] In United States District Court

[Title omitted]

Injunction Affidavit—Filed June 10, 1927

United States of America,
State of New York,
County of New York, ss:

John S. Alley, being first duly sworn according to law, deposes and says:

1. That he is the Vice-President of the Louis K. Liggett Company, the plaintiff in the above-entitled action; that

he is authorized to make this injunction affidavit on its [fol. 59] behalf and now so does; and that the matters herein averred, insofar as they may be within affiant's own knowledge, are true and correct, and insofar as they may be upon information and belief, affiant believes them to be true and correct.

2. The above-named plaintiff is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and engaged in the business of owning and carrying on a retail drug business within the several states of the United States of America. Its certificate of incorporation was granted on November 12, 1909. The plaintiff has since March 1, 1916, been duly registered and qualified to carry on and has actually carried on a retail drug business in the State of Pennsylvania.

3. The retail drug business of the plaintiff within the State of Pennsylvania was prior to the passage of the Pennsylvania Supplemental Act of May 13, 1927, and still is carried on at twenty-eight retail drug stores owned by it upon premises leased by it and situate at the respective addresses set forth in paragraph 7 of the bill of complaint filed in this cause. Said drug stores are under the management and personal supervision of pharmacists duly registered as such under the Pennsylvania Act of May 17, 1917, P. L. 208—each of said pharmacists having personal supervision of not more than one of said stores—; and are duly registered with and have permits issued by the Pennsylvania Board of Pharmacy under the Pennsylvania Supplemental Act of May 26, 1921, P. L. 1172. The lease on the premises 1541 Chestnut Street, Philadelphia, Pennsylvania, will expire on August 31, 1927; the lease on premises 500 Market Street, Chester Pennsylvania, will expire on January 31, 1928; the lease on the premises 14 So. 52d St., Philadelphia, Pennsylvania, will expire on March 31, 1928; the lease on the premises 3701 Germantown Avenue, Philadelphia, Pennsylvania, will expire on June 30, 1928; the lease on the premises 839 Market Street, Philadelphia, [fol. 60] Pennsylvania, will expire on December 31, 1928; the lease on the premises 25 So. Main Street, Wilkes-Barre, Pennsylvaina, will expire on March 31, 1929; the lease on the premises 300 So. Broad Street, Philadelphia, Pennsyl-

vania, will expire on October 31, 1929; and the remaining twenty-one existing leases of the plaintiff will expire on various dates after January 1, 1930.

4. On February 20, 1926, the plaintiff leased from Harry E. Kerstine the premises 901-03 Market Street, Philadelphia, Pennsylvania, for a term of twenty-one years, beginning July 15, 1927, and ending July 14, 1948. A full, true and correct copy of said indenture of lease is attached to and made a part of the bill of complaint filed in this cause, marked Exhibit B. The plaintiff intended at the time it entered into the above-mentioned lease and still intends to own and carry on a retail drug business on the said demised premises under the title "Pharmacy" or "Drug Store." Such business will include the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs; will be under the management and personal supervision of pharmacists duly registered as such under the Act of May 17, 1917, P. L. 208, and but for the action of the Pennsylvania Board of Pharmacy hereinafter set forth, will be registered with an licensed by the Pennsylvania Board of Pharmacy under the Supplemental Act of May 26, 1921, P. L. 1172.

5. On May 11, 1927, the plaintiff leased from William C. Cowen the premises 13 So. Center Street, Pottsville, Pennsylvania, for a term of ten years beginning May 19, 1927, and ending May 31, 1937. A full, true and correct copy of said lease is attached to and made a part of the bill of complaint filed in this cause, marked Exhibit C. At the same time, the plaintiff agreed to purchase the retail drug business owned and carried on by the said William S. Cowen on the said demised premises together [fol. 61] with all saleable merchandise, stock in trade, etc. A full, true and correct copy of the agreement of sale is attached to and made a part of the bill of complaint filed in this cause marked Exhibit D. The plaintiff intended at the time it entered into the above-mentioned lease and agreement of sale and still intends to own and carry on a similar retail drug business on the said demised premises under the title "Pharmacy" or "Drug Store." Such business will also be under the management and personal supervi-

sion of pharmacists duly registered as such under the Act of May 17, 1917, P. L. 208, and but for the action of the Pennsylvania Board of Pharmacy hereinafter set forth, will be registered with and licensed by the Pennsylvania Board of Pharmacy under the Supplemental Act of May 26, 1921, P. L. 1172.

6. The retail drug business of the plaintiff within the State of Pennsylvania has since March 1, 1916, shown a continuous and substantial growth and expansion, involving an investment of approximately $480,000; and in consonance with such growth and expansion, the plaintiff is contemplating the acquisition by purchase or lease of further sites in Pennsylvania for "Pharmacies" or "Drug Stores" to be owned and carried on by it in order to meet the growing demands of its business in that State. Such other additional "Pharmacies" or "Drug Stores" will likewise be under the management and personal supervision of pharmacists duly registered under the Act of May 17, 1917, P. L. 208, and but for the action of the Pennsylvania Board of Pharmacy hereinafter set forth, will be registered with and licensed by the Pennsylvania Board of Pharmacy under the Supplemental Act of May 26, 1921, P. L. 1172.

7. On May 13, 1927, the Governor of the Commonwealth of Pennsylvania, approved a Supplement to the Act of May 17, 1917, which provides that no other or additional pharmacies or drug stores shall be established, owned or conducted by a corporation organized and existing under the laws of any other state of the United States and authorized to do business in the State of Pennsylvania unless [fol. 62] all the members or partners thereof are registered pharmacists; and declares that any corporation violating the provisions thereof shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine of not more than $100 each day any such pharmacy or drug store is owned contrary to the provisions of this act. A full, true and correct copy of said Supplement is attached to and made a part of the bill of complaint filed in this case marked Exhibit A.

8. The capital stock of the plaintiff issued and outstanding on May 13, 1927, consists of 98,500 shares of common

stock of the par value of $100 per share and 5 shares of preferred stock of $100 per share making a total of outstanding common and preferred stock of $9,850,500. The common stock is all owned by the United Drug Company, a Massachusetts corporation; and the 5 shares of preferred stock are all owned by S. S. McCully, a registered pharmacist of Rhode Island and Massachusetts and a district manager for the plaintiff residing in Providence, Rhode Island.

The Board of Directors of the plaintiff consists of ten members, as follows: Louis K. Liggett, Chairman of the Board; George M. Gales, President; John E. Alley, W. C. Watt, Charles McCallum, and W. J. Rash, all of whom are Vice Presidents; L. O. Schmidt, Treasurer; B. H. Badanes, Secretary; F. L. Tompkins; and Roy M. Sterne. Of the foregoing officers and directors, John S. Alley is a registered pharmacist of Massachusetts; W. J. Rash is a registered pharmacist of New York; B. H. Badanes is a registered pharmacist of Massachusetts; and F. L. Tompkins is a registered pharmacist of Rhode Island. No other officer or director of the plaintiff is a registered pharmacist.

9. Affiant is informed by plaintiff's counsel, believes and therefore avers that under the terms of the Supplement of May 13, 1927, it will be unlawful for the plaintiff to own and carry on a retail drug business on the demised premises [fol. 63] in Philadelphia and Pottsville, Pennsylvania, as mentioned in paragraphs 4 and 5 of this injunction affidavit; that it will be unlawful for the plaintiff to own and carry on other or additional pharmacies and drug stores in Pennsylvania in order to meet the growing demands of its business in that State; and that it will be unlawful to own and carry on the twenty-eight retail drug stores now owned by it and referred to in paragraph 3 of this injunction affidavit, if new leases for such stores cannot be obtained upon the expiration of the respective terms provided for in the existing leases thereof, the first lease of which will expire on August 31, 1927.

10. A compliance with the provisions of the Supplement of May 13, 1927, by the plaintiff will destroy existing property and contract rights under the leases and agreement of sale mentioned in paragraphs 4 and 5 hereof in that the plaintiff may not lawfully own and carry on a retail drug

business on the demised premises; will retard all growth and expansion of the plaintiff's business in the State of Pennsylvania in that the plaintiff may not lawfully own and carry on other and additional pharmacies and drug stores; and may utterly wipe out and in effect confiscate the entire business of the plaintiff in the State of Pennsylvania with its investment of approximately $480,000 by making unlawful the continuation of that business at sites other than those now leased. The necessary effect of said Supplement will be immediate irreparable injury to the plaintiff's business within the State of Pennsylvania, which resultant injury may seriously affect and impair the retail drug business and good will of the plaintiff in the several states of the United States.

11. Under the terms of the Supplemental Act of May 26, 1921, P. L. 1172, it will be the right of the defendants Charles C. Campbell, Charles K. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, constituting the Pennsylvania Board of Pharmacy, [fol. 64] to suspend or revoke the licenses issued to the plaintiff for the twenty-eight retail pharmacies or drug stores now owned by the plaintiff upon the plaintiff's conviction for a second or any subsequent violation of the Supplement of May 13, 1927, upon the ground that the plaintiff owns and carries on a pharmacy or drug store, when all the members or partners of the plaintiff corporation are not registered pharmacists.

12. Under the terms of the Supplement of May 13, 1927, it will be the duty of the defendants Thomas J. Baldrige, Attorney General, and Charles Edwin Fox and M. H. Spicker, respective District Attorneys for the Counties of Philadelphia and Schuylkill, to prosecute the plaintiff as soon as the plaintiff owns and carries on pharmacies or drug stores upon the demised premises mentioned in paragraphs 4 and 5 hereof, or whenever the plaintiff owns and carries on other or additional pharmacies and drug stores in Pennsylvania, or whenever the plaintiff owns and carries on the now existing twenty-eight pharmacies and drug stores on sites other than those now leased by the plaintiff.

13. Affiant is informed by plaintiff's counsel, believes and therefore avers that the Supplement of May 13, 1927, is

unconstitutional in that it deprives the plaintiff of its property without due process of law and denies to the plaintiff the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States and also in that it impairs the obligations of the plaintiff's contracts in violation of Section 10 of Article 1 of the Constitution of the United States.

14. Under the terms of the Supplement of May 13, 1927, it will be the duty of the defendants Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, constituting the Pennsylvania Board of Pharmacy, to refuse and deny the plaintiff a license to own and carry on a retail drug business on the demised premises in the cities of Philadelphia and Pottsville, Pennsylvania, mentioned in paragraphs 4 [fols. 65-67] adn 5 hereof under the title "Pharmacy" or "Drug Store" because such "Pharmacy" or "Drug Store" is owned by a corporation, all the members or partners of which are not registered pharmacists.

15. Despite the unconstitutionality of the Supplement of May 13, 1927, affiant believes and therefore avers that the defendants in performance of their official duties as set forth in paragraphs 11, 12 and 14 hereof intend to prosecute the plaintiff, to deny and refuse licenses to the plaintiff and to suspend or revoke its licenses in the manner alleged in said paragraphs, unless this Court or some other competent court shall in the meantime declare the unconstitutionality of said Supplement. The performance by the defendants of their official duties as aforesaid must necessarily subject the plaintiff to oppressive penalties and a multiplicity of criminal suits; and also must necessarily cause irreparable damage to existing property and contract rights of the plaintiff.

16. The plaintiff has at all times complied with and still intends to comply with the provisions of the Act of May 17, 1917, P. L. 208, and the Supplemental Act of May 26, 1921, P. L. 1172, in the ownership and carrying on of its retail drug business within the State of Pennsylvania; but cannot comply with the provisions of the Supplement of May 13, 1927, that all the members and partners of the plaintiff corporation shall be registered pharmacists.

All of the foregoing facts affiant avers the plaintiff expects to prove at the hearing in this cause.

John S. Alley.

Sworn to and subscribed before me, a Notary Public, this third day of June, A. D. 1927. Margaret A. Crowe, Notary Public Queens County, No. 315. Notary Public. New York County Clerk's No. 557. New York County Register's No. 9398. Commission expires March 30, 1929. (Seal.)

[Certificate of Court Clerk affixed.]

[fol. 68] In United States District Court

[Title omitted]

Reply Affidavit re Preliminary Injunction—Filed June 16, 1927

United States of America,
State of Pennsylvania,
County of Dauphin, ss:

Thomas J. Baldrige, being duly sworn according to law, deposes and says:

1. That he is the Attorney General of the Commonwealth of Pennsylvania, one of the defendants in the above entitled [fol. 69] action; and that the matters herein averred insofar as they are within his knowledge are true and correct and insofar as they may be upon information and belief, he believes them to be true and correct.

2. That affiant is informed and believes and therefore avers that the lease entered into by plaintiff with Harry E. Kerstine for premises 901-03 Market Street, Philadelphia (the northwest corner of 9th and Market Streets) referred to in Paragraphs 10 and 11 of the Bill of Complaint and in Paragraph 4 of the Injuction Affidavits, was entered into not for the purpose of establishing a new retail drug store or pharmacy at said location but for the purpose of trans-

ferring and moving thereto a drug store or pharmacy now owned and conducted by plaintiff at the northeast corner of 9th and Market Streets, Philadelphia.

3. That affiant is informed and believes and therefore avers that the lease entered into by plaintiff with William S. Cowen for premises 13 South Center Street, Pottsville, Pennsylvania, and the agreement of sale for the purchase by plaintiff from William S. Cowen of the drug store or pharmacy theretofore owned and conducted by William S. Cowen at said premises, both of which instruments are dated May 11, 1927, referred to in Paragraphs 12 and 13 of the Bill of Complaint and in Paragraph 5 of the Injunction Affidavits, was entered into with full knowledge by the plaintiff of the passage by the Legislature of the Commonwealth of Pennsylvania of the Supplemental Act of May 13, 1927 attached to and made a part of the Bill of Complaint and marked Exhibit "A," of the probability of the approval of said Supplemental Act by the Governor of the Commonwealth of Pennsylvania within a few days thereafter, and of the necessity of the approval or disapproval of the said Supplemental Act by the said Governor on or before May 14, 1927.

4. That no violation of any of the provisions of the Act of May 11, 1917, P. L. 208, the Supplemental Act of May 26, 1921, P. L. 1172 and the said Supplemental Act of May 13, 1927 has been brought to defendants' attention, nor have they any knowledge or information of any violation by plaintiff of any of said Acts.

[fol. 70] 5. That no application for a license to conduct a drug store or pharmacy at any place or at any location in the State of Pennsylvania under the provisions of Sections 1 and 2 of the said Supplemental Act of May 26, 1921 has been made to and has been refused since May 13, 1927 by, or is now pending before, the defendants herein constituting the Pennsylvania Board of Pharmacy.

6. That no act of plaintiff, no conviction of plaintiff for any violation of any of the said Acts of Assembly set forth in Paragraph 4 hereof, nor any other matter or thing by reason of which any license of plaintiff to conduct a drug store or pharmacy may be suspended or revoked under the

provisions of Section 3 of said Supplemental Act of May 26, 1921, has been brought to defendants' attention, nor have any knowledge or information of any such acts, convictions, matters or things whatsoever.

7. That, by reason of the facts set forth in Paragraphs 4, 5 and 6 hereof, defendants have no intention to prosecute plaintiff, to refuse or deny to it any license to conduct a drug store or pharmacy or to suspend or revoke any license to conduct a drug store or pharmacy now held by plaintiff, nor have defendants communicated to plaintiff either in writing, orally or any manner whatsoever any intention to prosecute plaintiff, to institute any criminal or civil proceedings against it, to refuse or deny any license to it, or to suspend or revoke any of its licenses, nor have defendants in any way threatened plaintiff with any such proceedings or acts.

8. That affiant is informed and believes and therefore avers that the said Supplemental Act of May 13, 1927 and the enforcement thereof, and compliance therewith by the plaintiff, will not seriously or in any way or manner affect or impair the retail drug business and good will of the plaintiff in the several States of the United States, nor result in irreparable injury to the business of the plaintiff within the State of Pennsylvania, either immediately or in the future; that said Supplemental Act in no wise affects or impairs the retail drug business of the plaintiff owned and conducted by it at the time of the approval of said Supplemental Act.

[fol. 71] 9. That said Supplemental Act of May 13, 1927 and the enforcement thereof will not affect any future business, drug stores or pharmacies of the plaintiff within the State of Pennsylvania except insofar as the terms of said Supplemental Act apply thereto.

10. That affiant is informed and believes and therefore avers that the drug or pharmacy business of the plaintiff, which is being done at the stores now owned and conducted by it, is approximately 5% of the total business being done by the plaintiff at its said stores and that it is probable and likely that the drug or pharmacy business, which will or may in the future be done by plaintiff and which may

be or become subject to the provisions of the said Supplemental Act of May 13, 1927, will not exceed approximately 5% of the total business which may or will be done at any store or stores, which may be or become subject to the provisions of said Supplemental Act.

11. That affiant believes and therefore avers that the said Supplemental Act of May 13, 1927 is constitutional; that it does not deprive the plaintiff of its property without due process of law, nor deny to the plaintiff the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States; that it does not impair the obligations of the plaintiff's contracts in violation of Section 10, Article I of the Constitution of the United States; but on the contrary it is averred that the said Supplemental Act was enacted by the Legislature of the Commonwealth of Pennsylvania by virtue of the police power inherent in it to legislate for the public good, health and welfare, and that the enactment of said Supplemental Act was and is a proper exercise of legislative authority.

Thos. J. Baldrige.

Sworn to and subscribed before me this 15th day of June, A. D. 1927. Lloyd B. Shoap, Notary Public. My commission expires April 14, 1931. (Seal.)

[fol. 72] In United States District Court

[Title omitted]

Reply Affidavit re Preliminary Injunction—Filed June 16, 1927

United States of America,
State of Pennsylvania,
County of Dauphin, ss:

Charles F. Kramer, being duly sworn according to law, deposes and says:

1. That he is one of the defendants in the above entitled action and a member and Secretary of the Pennsylvania

Board of Pharmacy; that he is authorized to make this affidavit for and on behalf of said Pennsylvania Board of Pharmacy; and that the matters herein averred insofar as they are within his knowledge are true and correct and insofar as they may be upon information and belief, he believes them to be true and correct.

2. That affiant is informed and believes and therefore avers that the lease entered into by plaintiff with Harry [fol. 73] E. Kerstine for premises 901-03 Market Street, Philadelphia (the northwest corner of 9th and Market Streets) referred to in Paragraphs 10 and 11 of the Bill of Complaint and in Paragraph 4 of the Injunction Affidavits, was entered into not for the purpose of establishing a new retail drug store or pharmacy at said location but for the purpose of transferring and moving thereto a drug store or pharmacy now owned and conducted by plaintiff at the northeast corner of 9th and Market Streets, Philadelphia.

3. That affiant is informed and believes and therefore avers that the lease entered into by plaintiff with William S. Cowen for premises 13 South Center Street, Pottsville, Pennsylvania, and the agreement of sale for the purchase by plaintiff from William S. Cowen of the drug store or pharmacy theretofore owned and conducted by William S. Cowen at said premises, both of which instruments are dated May 11, 1927, referred to in Paragraphs 12 and 13 of the Bill of Complaint and in Paragraph 5 of the Injunction Affidavits, was entered into with full knowledge by the plaintiff of the passage by the Legislature of the Commonwealth of Pennsylvania of the Supplemental Act of May 13, 1927, attached to and made a part of the Bill of Complaint and marked Exhibit "A," of the probability of the approval of said Supplemental Act by the Governor of the Commonwealth of Pennsylvania within a few days thereafter and of the necessity of the approval or disapproval of the said Supplemental Act by the said Governor on or before May 14, 1927.

4. That no violation of any of the provisions of the Act of May 11, 1917, P. L. 208, the Supplemental Act of May

26, 1921, P. L. 1172 and the said Supplemental Act of May 13, 1927, has been brought to defendants' attention, nor have they any knowledge or information of any violation by plaintiff of any of said Acts.

5. That no application for a license to conduct a drug store or pharmacy at any place or at any location in the State of Pennsylvania under the provisions of Sections 1 and 2 of the said Supplemental Act of May 26, 1921 has been made to and has been refused since May 13, 1927, by, or is now pending before, the defendants herein constituting the Pennsylvania Board of Pharmacy.

[fol. 74] 6. That no act of plaintiff, no conviction of plaintiff for any violation of any of the said Acts of Assembly set forth in Paragraph 4 hereof, nor any other matter or thing by reason of which any license of plaintiff to conduct a drug store or pharmacy may be suspended or revoked under the provisions of Section 3 of said Supplemental Act of May 26, 1921, has been brought to defendants' attention, nor have they any knowledge or information of any such acts, convictions, matters or things whatsoever.

7. That, by reason of the facts set forth in Paragraphs 4, 5 and 6 hereof, defendants have no intention to prosecute plaintiff, to refuse or deny to it any license to conduct a drug store or pharmacy, or to suspend or revoke any license to conduct a drug store or pharmacy now held by plaintiff, nor have defendants communicated to plaintiff either in writing, orally or any manner whatsoever any intention to prosecure plaintiff, to institute any criminal or civil proceedings against it, to refuse or deny any license to it, or to suspend or revoke any of its licenses, nor have defendants in any way threatened plaintiff with any such proceedings or acts.

8. That affiant is informed and believes and therefore avers that the said Supplemental Act of May 13, 1927 and the enforcement thereof, and compliance therewith by the plaintiff, will not seriously or in any way or manner affect or impair the retail drug business and good will of the plaintiff in the several States of the United States, nor result in irreparable injury to the business of the plaintiff within the State of Pennsylvania, either immediately or in

the future; that said Supplemental Act in no wise affects or impairs the retail drug business of the plaintiff owned and conducted by it at the time of the approval of said Supplemental Act.

9. That said Supplemental Act of May 13, 1927 and the enforcement thereof will not affect any future business, drug stores or pharmacies of the plaintiff within the State of Pennsylvania except insofar as the terms of said Supplemental Act apply thereto.

[fol. 75] 10. That affiant is informed and believes and therefore avers that the drug or pharmacy business of the plaintiff, which is being done at the stores now owned and conducted by it, is approximately 5% of the total business being done by the plaintiff at its said stores and that it is probable and likely that the drug or pharmacy business, which will or may in the future be done by plaintiff and which may be or become subject to the provisions of the said Supplemental Act of May 13, 1927, will not exceed approximately 5% of the total business which may or will be done at any store or stores, which may be or become subject to the provisions of said Supplemental Act.

11. That affiant is informed and believes and therefore avers that the said Supplemental Act of May 13, 1927 is constitutional; that it does not deprive the plaintiff of its property without due process of law, nor deny to the plaintiff the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States; that it does not impair the obligations of the plaintiff's contracts in violation of Section 10, Article I, of the Constitution of the United States; but on the contrary it is averred that the said Supplemental Act was enacted by the Legislature of the Commonwealth of Pennsylvania by virtue of the police power inherent in it to legislate for the public good, health and welfare, and that the enactment of said Supplemental Act was and is a proper exercise of legislative authority.

Charles F. Kramer.

Sworn and subscribed to before me this 15th day of June, A. D. 1927. Lloyd B. Shoap, Notary Public. My commission expires April 14, 1931. (Seal.)

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

REBUTTAL AFFIDAVIT ON BEHALF OF PLAINTIFF—Filed June 17, 1927

UNITED STATES OF AMERICA,
State of Pennsylvania,
County of Philadelphia, ss:

John S. Alley, having been duly sworn according to law, deposes and says that he has read the reply affidavits of Thomas J. Baldrige and Charles F. Kramer, filed in the above cause; that he is a vice-president of the plaintiff corporation; that he is familiar with the facts involved in this cause; that as to matters herein averred of which he has personal knowledge the same are true, and as to matters averred of which he has not personal knowledge he had information and belief upon the same and believes the same to be true.

In rebuttal of the matter set forth in paragraph 2 of the said reply affidavits, affiant avers as follows:

1. The facts set forth in said paragraphs numbered 2 are incorrect. Plaintiff now conducts a drug store in accordance with the provisions of the Acts of 1917 and 1921, referred to in the bill of complaint, at 839 Market Street, Philadelphia. The lease on said premises will not expire until December 31, 1928. The plaintiff proposes to continue to operate said drug store until the expiration of said lease, subject only to this qualification, that should plaintiff be able at some time during the year 1927 or 1928 to cancel and end said lease, it would in that case discontinue said store. The establishment of its proposed drug store at [fol. 77] 901-03 Market Street is not, however, contingent upon the expiration or cancellation of the lease at 839 Market Street. It is the present intent of the plaintiff as soon as it can obtain possession of 901-03 Market Street to establish and conduct a drug store therein. The lease which it holds for said premises 901-03 Market Street entitles it to possession July 15, 1927, and in order to occupy said store on said date, or as soon thereafter as possible, plain-

tiff must immediately make necessary arrangements to purchase and procure materials and fixtures, etc., at great expense to it. It must also let contracts for the alteration of the building for its uses, and said contracts should be let now.

2. In answer to the averments in the paragraphs numbered 3 of said reply affidavits, affiant deposes as follows: It is true that the lease entered into by the plaintiff with William S. Cowan, mentioned in the bill of complaint, was entered into, as was the purchase agreement mentioned in the bill of complaint, on May 11, 1927. It is further true, however, that said lease and agreement were only executed after months of negotiation with the said Cowan, which negotiations were begun long anterior to any knowledge or belief on the part of plaintiff, its officers or agents, that the Act of May 13, 1927, would be adopted. Plaintiff must make settlement with said Cowan and close the transaction and pay over the consideration on or before June 28, 1927, under the term of its said contract. The time for closure has been extended from May 18, to June 28 by mutual agreement with said Cowan said Cowan having refused to extend the time for closure and settlement any further. It is necessary, therefore, for plaintiff to make necessary contracts and arrangements for the fitting and opening of said store under its ownership and conduct, and great and irreparable loss will be occasioned plaintiff if it cannot do so.

3. Affiant further avers that it has been and is the full intent of plaintiff, in good faith and in an honest belief in its rights so to do, to carry out and proceed at both of the locations mentioned, to wit, 901-03 Market Street, Phila- [fol. 78] delphia, and Pottsville, Pennsylvania, the opening of such further and additional stores, as more fully described in the bill of complaint. Plaintiff, however, is threatened with grave and serious losses, forfeitures and penalties if it shall proceed as it is advised by counsel it is entitled under the law to proceed so to do, and the averments in the reply affidavits filed on behalf of defendants in paragraphs 11 of the reply affidavits clearly demonstrated by their insistence on the validity and constitutionality of the Act of May 13, 1927, that plaintiff will,

unless it desists from its aforesaid intention, be subjected to pains and penalties and serious property damage which will be irreparable, unless it desists from its intention so to open and operate said drug stores.

4. Replying to paragraphs 4, 5 and 6 of said reply affidavits, affiant avers that averments by the defendants that they now know of no violations by plaintiff to said Act of May 13, 1927, are mere averments that to this date plaintiff has not in fact opened and embarked upon the ownership of the drug stores at 901-03 Market Street, —, Pennsylvania, and Pottsville, Pennsylvania, referred to in the bill of complaint. Affiant is informed by counsel, believes and therefore avers, that prosecution under the Act of May 13, 1927, may be instituted by any private citizen of the Commonwealth of Pennsylvania under the laws of Pennsylvania, whereupon it would become the duty of certain of the defendants to carry forward such prosecution, and that the denial or granting of a license by the Pharmacy Board of Pennsylvania would in no wise affect the criminal liability and the pains and penalties prescribed by said Act of Assembly should plaintiff carry out its intention to own and conduct said two drug stores mentioned in the bill of complaint. Affiant further avers that by virtue of the provisions of the Act of May 26, 1921, should plaintiff be prosecuted and convicted of two offenses under the Act of May 13, 1917 (and each day's ownership constitutes a separate offense under said Act), it would become the right of the defendants, the Pharmacy Board of Pennsylvania, to revoke the licenses of all of plaintiff's stores in the Commonwealth of Pennsylvania. The jeopardy thus involved to the plaintiff, of forfeiture of its property rights, would run into hundreds of thousands of dollars.

[fol. 79] 5. Answering the averments of paragraphs 10 of said reply affidavits, the affiant avers as follows:

The best figures obtainable in the trade show that the business of large drug store concerns is divided amongst the various classifications of articles sold approximately as follows:

	Percentages of total business
Prescriptions	.0640
Medicines	2939
Hospitals	.0577
Fancy Goods	2224
Candy	.0603
Cigars	1427
Soda	1590
Total	100%

As a matter of fact, the gross business of plaintiff at its stores in the Commonwealth of Pennsylvania in the calendar year 1926 was $2,899,789.88. Of these gross sales the sales of the prescription department of plaintiff in its stores in Pensylvania were $163,487.40, and the gross sales of medicines, by which is meant proprietary medicines and standard formulæ, articles of medicine and household remedies, totalled $793,849.86. It is further true that the prescription business constitutes a vital part of the conduct of a drug store as the same are conducted in the United States at this time. Many members of the public will not and do not patronize a drug store which does not put up prescriptions. It is the practice of many purchasers to go to a drug store for prescriptions to purchase many other articles of hospital, sick room and household use in connection with the use of the prescription, and any attempt to conduct a store which is not in the true sense a drug store, in that it makes up and sells prescriptions, will necessarily result in a very large decrease of the business of such store. A drug store, as the same is commonly understood in the practise in the United States today, is the place where members of the public purchase prescriptions and medicines, and also other customary articles commonly carried in drug stores for sale.

John S. Alley.

Sworn to and subscribed before me this 17th day of June, 1927. Amelia H. Syren, Notary Public. (Seal.)

[fols. 80 & 81] In United States District Court

[Title omitted]

Before Wooley, Circuit Judge, Dickinson and Kirkpatrick, District Judges.

Opinion sur Motion for a Preliminary Injunction—Filed July 25, 1927

Dickinson, J.:

We see no need for the expression of any opinion by us respecting the merits of this Bill at this time. The defendants disclaim any present intention to interfere with the plaintiff. The only action which could be taken must be postponed to some act of the plaintiff which might be construed to be a violation of the provisions of the Act of Assembly, the constitutionality of which is raised. It seems to us the case is ripe for the entry of a final decree. This might be reached either on a motion to dismiss the Bill on its own averments or by a stipulation that the cause be heard as upon a final hearing on the pleadings and proofs, the supporting and answering affidavits being accepted as the proofs. This was suggested to the parties but as yet has not been acted upon. We assume the willingness of the defendants to agree that they will take no action against the plaintiff without previous notice of their intention so to do (not less than forty-eight hours) so that plaintiff may recall to our attention its motion for a preliminary injunction, leave to do which is now granted. In the meantime we hold the pending motion under advisement.

[fol. 82] In United States District Court

[Title omitted]

Supplemental Bill of Complaint—Filed August 17, 1927

To the Honorable the Judges of the said Court:

The Louis K. Liggett Company, a corporation, brings this its supplemental bill of complaint against the Honorable Thomas J. Baldrige, Attorney General of the Common-

wealth of Pennsylvania; Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, constituting the Pennsylvania Board of Pharmacy; the Honorable Charles Edwin Fox, District Attorney for the County of Philadelphia, Pennsylvania; and the Honorable M. H. Spicker, District Attorney for the County of Schuylkill, Pennsylvania; and thereupon further complains and says:

1. On June 4, 1927, the plaintiff filed its original bill in the above entitled cause, averring such matters and things and praying for such relief as therein stated, reference to which original bill of complaint is now specifically made for the sole purpose that the averments and prayers thereof may be incorporated into this supplemental bill of complaint.

[fol. 83] 2. The several defendants named in the original bill of complaint were duly served and have entered their appearances; and a hearing sur motion for a preliminary injunction was had on June 17, 1927, before three judges, pursuant to Section 266 of the Judicial Code.

3. The plaintiff avers by way of this supplemental bill of complaint that, subsequent to such hearing, the plaintiff duly applied to the Pennsylvania Board of Pharmacy for a permit to conduct a registered pharmacy at 13 S. Center Street, Pottsville, Pennsylvania, under the Act of Assembly of May 26, 1921, P. L. 1172, said pharmacy having been purchased by the plaintiff from one William S. Cowen under a written agreement of sale, dated May 11, 1927, as is more fully set forth in paragraphs 12 and 13 of the original bill of complaint heretofore filed in the above entitled cause. The defendant, Charles F. Kramer, as Director, Division of Drug Store Registration, State Board of Pharmacy, acknowledged the receipt of such application on June 30, 1921, and advised the plaintiff that—"Inasmuch as your right to secure such a permit is affected by the construction of the Act of May 13, 1927, it would be necessary to hold and file your application until such time as the Board of Pharmacy has opportunity to formulate rules and regulations for putting into practice the pro-

visions of the Act just referred to. You will be notified as soon as the Board has had an opportunity to act definitely upon your application."

4. The plaintiff further avers by way of this supplemental bill of complaint that on June 28, 1927, the plaintiff settled in full with the said William S. Cowen for the said Pottsville Drug Store, immediately took possession of the same, and has since owned and carried on a retail drug business on the premises under the title of "Drug Store" or "Pharmacy," which business includes the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons, other than proprietary medicines and commonly used household drugs. Said drug store has at all times been under the management and personal supervision of duly registered pharmacists in the plaintiff's employ, but because of the Act of May 13, 1927, no permit [fols. 84 & 85] for this drug store has yet been issued by the Pennsylvania Board of Pharmacy under the Act of May 26, 1921, P. L. 1172.

5. This supplemental bill of complaint is filed under an agreement of counsel and pursuant to leave of this Court first had and obtained.

Wherefore, the plaintiff is in need of equitable relief and further prays—

(a) That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the defendants, Thomas J. Baldrige and M. H. Spicker, from prosecuting or bringing any criminal action against the plaintiff for a violation of the Supplement of May 13, 1927, because of the ownership and carrying on by plaintiff of a retail drug business (including the compounding, dispensing, preparation and sale and retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs at 13 S. Center Street, Pottsville, Pennsylvania, under the title of "Drug Store" or "Pharmacy" when such "Drug Store" or "Pharmacy" is owned by a corporation, all of the members and partners of which are not registered pharmacists.

(b) Such other and further relief as to your Honorable Court shall seem meet.

And the plaintiff will ever pray, etc.

Roy M. Stearne, Owen J. Roberts, Attorneys for Plaintiff.

Duly sworn to by —— ——. Jurat omitted in printing.

[fol. 86] In United States District Court

[Title omitted]

Answer to Bill of Complaint—Filed September 23, 1927

The answer of the Honorable Thomas J. Baldrige, Attorney General of the Commonwealth of Pennsylvania; Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, Constituting the Pennsylvania Board of Pharmacy; the Honorable Charles Edwin Fox, District Attorney for the County of Philadelphia, Pennsylvania; and the Honorable M. H. Spicker, District Attorney for the County of Schuylkill, Pennsylvania, the defendants in the above entitled cause, to the bill of complaint of the plaintiff above named, or to so much or such parts thereof as the defendants are advised that it is material or necessary for them to make answer, respectfully shows to the court:

1. The defendants admit that the plaintiff was at all times mentioned in the said bill of complaint and still is a corporation organized and existing under the laws of the Commonwealth of Massachusetts; but defendants, however, have no knowledge or information, and are ignorant, of the purposes for which said corporation was organized and, if the same be material to this cause, demand proof thereof. The defendants further admit that the plaintiff since March [fol. 87] 1, 1916 has been registered and qualified to carry on its business in the State of Pennsylvania, which business was stated in the application for registration to carry on business to be the conducting of retail drug stores.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted; the defendants aver, however, that the plaintiff intended and still intends to own and carry on upon the premises 901-03 Market Street, Philadelphia, Pennsylvania, the retail drug business which, at the time of the filing of the said bill of complaint, was owned and being conducted at 839 Market Street, Philadelphia, Pennsylvania, and that the lease entered into by plaintiff, as set forth in paragraph 10 of said bill of complaint, was entered into not for the purpose of establishing a new retail drug store or pharmacy upon the above premises 901-03 Market Street, Philadelphia, Pennsylvania, but for the purpose of transferring and moving thereto the drug store or pharmacy owned and conducted by the plaintiff at the time of the filing of said bill of complaint, at 839 Market Street, Philadelphia, Pennsylvania, being the northeast corner of Ninth and Market Streets, Philadelphia.

12. Admitted; the defendants aver, however, that the plaintiff entered in to the lease and agreement of sale referred to in paragraph 12 of said bill of complaint with full knowledge by the plaintiff of the passage by the Legislature of the Commonwealth of Pennsylvania of the Supplemental Act of May 13, 1927, referred to in paragraph 9 of the said bill of complaint, of the necessity of the approval or disapproval of the said Supplemental Act by the Governor of the Commonwealth of Pennsylvania on or before May 14, 1927, and of the probability of the approval of said Supplemental [fol. 88] Act by the said Governor within a few days after the date of the execution of said lease and agreement of sale.

13. Admitted.

14. The defendants have no information or knowledge, and are ignorant, of the intentions of the plaintiff to lease or purchase and to establish and own pharmacies or drug

stores within the State of Pennsylvania other and additional to those set forth in paragraphs 7, 10, 11, 12 and 13 of said bill of complaint and, if the same be material to this cause, demand proof thereof.

15. Admitted.

16. Defendants aver that the allegations of paragraph 16 of the said bill of complaint are conclusions of law and that they are not required to make answer thereto.

17. Defendants aver that the allegations of paragraph 17 of the said bill of complaint are conclusions of law and that they are not required to make answer thereto.

18. Defendants deny that the said supplement referred to in paragraph 9 of the said bill of complaint is unconstitutional; defendants, on the other hand, are informed and advised, believe and therefore aver that the said supplement is constitutional, that it was enacted by the Legislature of the Commonwealth of Pennsylvania by virtue of the police power inherent in it to legislate for the public good health and welfare, and that the enactment of said supplement was and is a proper exercise of legislative authority; that said supplement does not deprive the plaintiff of its property without due process of law, nor does it deny to the plaintiff the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United State, nor does it impair the obligations of the plaintiff's contracts in violation of Section 10 of Article I of the Constitution of the United States.

19. The defendants admit that, under the terms of the said supplement referred to in paragraph 9 of the said bill of complaint, it is the duty of the Attorney-General of the Commonwealth of Pennsylvania and the District Attorneys of the proper Counties of the State of Pennsylvania, to [fol. 89] prosecute any and all corporations violating the provisions of the said supplement; the defendants deny that the defendants, Thomas J. Baldrige, Charles Edwin Fox and M. H. Picker, intend to prosecute the plaintiff if it should own or carry on a retail drug business on the premises in the Cities of Philadelphia and Pottsville, Pennsylvania, as set forth in paragraph 19 of the said bill of com-

plaint, but the defendants aver that the said defendants, Thomas J. Baldrige, Charles Edwin Fox and M. H. Spicker, intend to prosecute the plaintiff only if it should own or carry on a retail drug business in violation of the terms and provisions of said supplement; and defendants further aver that they have in no way threatened the plaintiff with any prosecutions or intended prosecutions.

20. The defendants deny that under the terms of the said supplement set forth in paragraph 9 of the said bill of complaint, it is the duty of the Pennsylvania Board of Pharmacy to refuse and deny the plaintiff a license to own and carry on a retail drug business on the premises in the Cities of Philadelphia and Pottsville, as set forth in paragraph 20 of the said bill of complaint, or that the said Pennsylvania Board of Pharmacy intend to refuse and deny the plaintiff a license to conduct said retail drug business; but the defendants aver that the duty and intention of the said Pennsylvania Board of Pharmacy is to refuse and deny the plaintiff a license to conduct retail drug businesses only when said retail drug businesses will be owned and carried on in violation of the terms and provisions of said supplement; and the defendants further aver that the said Pennsylvania Board of Pharmacy has in no way threatened to refuse and deny any licenses to the plaintiff.

21. The defendants admit that under the terms of the Supplemental Act of May 26, 1921, P. L. 1172, it is the right of Pennsylvania Board of Pharmacy to suspend or revoke the licenses heretofore issued to the plaintiff to carry on a retail drug business within the State of Pennsylvania upon the conviction of the plaintiff for a second or any subsequent violation of any law of the State of Pennsylvania, or of the United States, pertaining to the drug business, or [fol. 90] for aiding in or abetting the violation of any such law; but the defendants deny that the Pennsylvania Board of Pharmacy had any intention at the time of the filing of the said bill of complaint, or intends at the present time, to suspend or revoke any licenses heretofore issued to the plaintiff for owning and carrying on pharmacies or drug stores within the State of Pennsylvania; and the defendants aver that the said Pennsylvania Board of Pharmacy has in

no way threatened to suspend or revoke any licenses issued to the plaintiff.

22. The defendants deny that the compliance by the plaintiff with the supplement set forth in paragraph 9 of the said bill of complaint will destroy valuable existing contract and property rights or will cause immediate or future irreparable injury to the plaintiff's business within the State of Pennsylvania, or will seriously impair the plaintiff's business elsewhere within the United States, or that failure to comply with said supplement will subject the plaintiff to oppressive penalties or a multiplicity of suits; but the defendants aver that a compliance by the plaintiff with the said supplement and enforcement thereof will affect the business, drug stores or pharmacies of the plaintiff within the State of Pennsylvania only in so far as the terms of said supplement apply thereto and will affect only the drug or pharmacy business of such stores as may be acquired and conducted by the plaintiff in the future; that the defendants are informed and believe and, therefore, aver that the drug or pharmacy business of the plaintiff which is being done at the stores now owned and conducted by it is approximately only five percent (5%) of the total business being done by the plaintiff at its said stores and that it is probable or likely that the drug or pharmacy business, which will or may in the future be done by the plaintiff and which may be or become subject to the provisions of the said supplement, will not exceed approximately five percent (5%) of the total business which may or will be done at any store or stores which may be or may become subject to the provisions of said supplement.

23. The defendants further allege, as a distinct and separate defense to said bill of complaint, that the plaintiff has an adequate and complete remedy against these defendants at common law.

[fol. 91] 24. The defendants further allege, as a distinct and separate defense to said bill of complaint, that this action is premature in that the said defendants have neither threatened in any way nor taken any action whatsoever to institute any criminal or civil proceedings against

the plaintiff to refuse or deny any license to it or to suspend or revoke any of its licenses.

25. The defendants further allege, as a distinct and separate defense to said bill of complaint, that the plaintiff is a foreign corporation; that the Commonwealth of Pennsylvania, through its Legislature, may prescribe the terms and conditions under which foreign corporations may qualify to engage or continue in business in said Commonwealth of Pennsylvania; and that the plaintiff has no standing in any Court to question or object to the application to it or the enforcement against it of said supplement set forth in paragraph 9 of the said bill of complaint.

Wherefore, the defendants pray that the said bill of complaint be dismissed, with costs.

Thomas J. Baldrige, Attorney General of the Commonwealth of Pennsylvania; Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell, John A. H. Keith, Pennsylvania Board of Pharmacy; Charles Edwin Fox, District Attorney for the County of Philadelphia, Pennsylvania; M. H. Spicker, District Attorney for the County of Schuylkill, Pennsylvania, by Paul C. Wagner, Deputy Attorney General, Thomas J. Baldrige, Attorney General, Counsel for the Defendants.

[fol. 92] *Duly sworn to by Thomas J. Baldridge. Jurat omitted in printing.*

[fol. 93] In United States District Court

[Title omitted]

Answer to Supplemental Bill of Complaint—Filed September 23, 1927

The answer of the Honorable Thomas J. Baldrige, Attorney General of the Commonwealth of Pennsylvania; Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell and John A. H. Keith, Constituting the Pennsylvania Board of Pharmacy;

the Honorable Charles Edwin Fox, District Attorney for the County of Philadelphia, Pennsylvania; and the Honorable M. H. Spicker, District Attorney for the County of Schuylkill, Pennsylvania, the defendants in the above entitled cause, to the supplemental bill of complaint of the plaintiff above named, respectfully shows to the Court:

1. The defendants admit that the plaintiff filed its original bill of complaint in the above entitled cause on June 4, 1927, and in answer to the averments and prayers thereof reference is now specifically made to the answer of the defendants to said original bill heretofore filed for the purpose that the averments and prayers in said answer contained may be incorporated into this answer as being the answer to said original bill.

[fol. 94] 2. Admitted.

3. Admitted.

4. The defendants admit that on June 28, 1927 the plaintiff settled in full with William S. Cowen for the Pottsville Drug Store, immediately took possession of the same and has since owned and carried on a retail drug business on the premises under the title of "Drug Store" or "Pharmacy," which business includes the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons, other than proprietary medicines and commonly used household drugs and that said drug store has at all times been under the management and personal supervision of duly registered pharmacists in the plaintiff's employ. The defendants deny that no permit for said drug store has yet been issued by the Pennsylvania Board of Pharmacy under the Act of May 26, 1921, P. L. 1172 because of the Act of May 13, 1927, but on the contrary the defendants aver that the reason why no permit for said drug store has yet been issued by the Pennsylvania Board of Pharmacy is that set forth in the advice sent by the defendant Charles F. Kramer, Director Division of Drug Store Registration, State Board of Pharmacy, to the plaintiff on July 30, 1927, as set forth in full in Paragraph 3 of the supplemental bill of complaint of the plaintiff.

5. Admitted.

6. Defendants further allege as distinct and separate defences to said supplemental bill of complaint all of the distinct and separate defences set forth and alleged in the answer of the defendants to the original bill of complaint in this cause.

Wherefore the defendants pray that the said supplemental bill of complaint be dismissed with costs.

Thomas J. Baldrige, Attorney General of the Commonwealth of Pennsylvania; Charles C. Campbell, Charles F. Kramer, Lucius L. Walton, Henry W. Merritt, Walter Rothwell, John A. H. Keith, Pennsylvania Board of Pharmacy; Charles Edwin Fox, [fol. 95] District Attorney for the County of Philadelphia, Pennsylvania; M. H. Spicker, District Attorney for the County of Schuylkill, Pennsylvania, by Paul C. Wagner, Deputy Attorney General; Thomas J. Baldridge, Attorney General, Counsel for the Defendants.

Duly sworn to by Thomas J. Baldridge. Jurat omitted in printing.

[fol. 96] In United States District Court

[Title omitted]

Motion for a Preliminary Injunction—Filed October 31, 1927

And now, to wit, October 31, 1927, the Louis K. Liggett Company, the plaintiff above named, by its attorney, Owen J. Roberts, Esq., and pursuant to leave of Court heretofore granted, renews its motion for a preliminary injunction in the above entitled proceedings.

Owen J. Roberts, Attorney for Plaintiff.

[fol. 97] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CERTAIN FACTS—Filed November 1, 1927

And now, to wit, November 1, 1927, it is hereby stipulated and agreed by and between counsel for the plaintiff and the defendants in the above entitled proceeding in equity that the plaintiff having on October 31, 1927 renewed its motion for a preliminary injunction, this cause may now be disposed of by the Court as upon final hearing on the pleadings and proofs, such pleadings being the original bill of complaint, the supplemental bill of complaint, and the several answers thereto heretofore filed, and such proofs being the facts admitted in the pleadings, together with the following new and additional facts which are to be admitted and accepted by the Court as part of the proofs in this proceeding, namely:

That subsequent to the hearing on June 17, 1927 sur the plaintiff's motion for a preliminary injunction, the plaintiff has duly acquired by purchase and now owns a "Pharmacy" or "Drug Store," situate at 14 Carlisle Street, Hanover, Pennsylvania, which "Pharmacy" or "Drug Store" was purchased from Jacob L. Emlet and Rena B. Emlet, Executrix of the Estate of John N. Emlet, Deceased, together with all sal-able merchandise and stock in trade (including drugs, medicines, chemicals, toilet articles, stationery and goods, and wares of every kind), prescription files and records, and chattels and property of every nature and description, etc.; that the plaintiff by an indenture of lease, dated October 11, 1927 leased the site of the said drug store in Hanover, Pennsylvania, for a term of 10 [fol. 98] years beginning October 17, 1927 and for the purpose of operating a retail drug store on the demised premises; that settlement in full for the said drug store (except as to the price of sal-able merchandise, which price is to be determined by inventory and subsequently paid on or before December 14, 1927) was made by the plaintiff on October 15, 1927, at which time the plaintiff took possession of the said drug store; that the plaintiff on October 14, 1927

duly applied to the Pennsylvania Board of Pharmacy for a permit to conduct a registered pharmacy or drug store upon the demised premises under the Act of Assembly of May 26, 1921, P. L. 1172, which pharmacy or drug store will be under the management and personal supervision of duly registered pharmacists in the plaintiffs employ, and the operation thereof will include the compounding, dispensing, preparation and sale at retail of drugs, medicines, and poisons other than proprietary medicines; and *poisons other than proprietary medicines and* commonly used household drugs; and that the purchase of the said pharmacy or drug store at Hanover, Pennsylvania, by the plaintiff and the ownership and operation of a retail drug business on the demised premises is in accordance with the averment by the plaintiff in paragraph 14 of its original bill of complaint of an intention to lease or purchase and to establish and own other and additional pharmacies or drug stores within the State of Pennsylvania (the plaintiff owning and operating 28 retail pharmacies or drug stores in Pennsylvania at the time of the filing of the original bill of complaint), and through registered pharmacists in its employ, and under the title "Pharmacy" or "Drug Store" to carry on its retail drug business therein in accordance with the Acts of May 17, 1917, P. L. 208, and May 26, 1921, P. L. 1172.

That since October 17, 1927, the plaintiff has owned and carried on a retail drug business on the demised premises in Hanover, Pennsylvania, under the title "Pharmacy" or "Drug Store" and through pharmacists in its employ and duly registered in Pennsylvania under and in accordance with the Acts of May 17, 1917 and May 26, 1921, such business including the compounding, dispensing, preparation and sale at retail of drugs, medicines, and poisons other [fol. 99] than proprietary medicines and commonly used household drugs; and that during this period, in which the plaintiff has owned and operated the aforesaid "Pharmacy" or "Drug Store," the members or partners of the plaintiff corporation have not all been registered pharmacists and are not now all registered pharmacists.

That on October 26, 1927, the Pennsylvania State Board of Pharmacy refused to grant to the plaintiff a permit for

the said "Pharmacy" of "Drug Store" at Hanover, Pennsylvania, and a copy of the letter of refusal by the Pennsylvania State Board of Pharmacy is attached to and made a part of this Stipulation of Counsel, marked Exhibit "A;" and that the Attorney General of Pennsylvania, Thomas J. Baldrige, and the District Attorney of the proper County of Pennsylvania, fully intend to and will prosecute the plaintiff for its violations of the provisions of the Act of May 13, 1927 in owning and carrying on a retail drug business on the demised premises in Hanover, Pennsylvania, under the title "Pharmacy" or "Drug Store," and through duly registered pharmacists in its employ, such business including the compounding, dispensing, preparation and sale at retail of drugs, medicines and poisons other than proprietary medicines and commonly used household drugs, when all the members or partners of the plaintiff corporation are not registered pharmacists.

Owen J. Roberts, Attorney for Plaintiff. Paul C. Wagner, Attorney for Defendants.

[fol. 100] EXHIBIT "A" TO STIPULATION

October 26, 1927.

Louis K. Liggett Company, Liggett Building, Forty-second Street and Madison Avenue, New York City, N. Y.

Gentlemen: I beg to acknowledge receipt of your letter of October 13th enclosing an application of your Company for the registration of, and permit to conduct, a pharmacy at 14 Carlisle Street, Hanover, Pennsylvania, together with check for $2.00 covering the permit fee.

I am reliably informed that the pharmacy which you propose to conduct at the above location was acquired by you subsequent to the approval of Act No. 491 of 1927 (Act of May 13, 1927) under the provisions of which it is unlawful for your Company to own and conduct the pharmacy for which application is made. It will therefore be impossible for the Board to issue a permit for this location.

Your application and check are herewith returned by order of the Board of Pharmacy.

Very truly yours, Charles P. Kramer, Director Division of Drug Store Registration.

[fol. 101] In United States District Court

[Title omitted]

Before Wooley, Circuit Judge, Dickinson and Kirkpatrick, District Judges, Specially Sitting

Opinion sur Trial Hearing on Bill, Answer and Proofs—Filed December 8, 1927

Dickinson, J.:

We have given this case the above dual sub-heading, and dispose of the motion for a preliminary restraining order at the request of counsel who have further stipulated all the facts that we might likewise dispose of the case on final decree.

The General Fact Situation

The Pennsylvania Legislature has passed a series of Acts of Assembly each of which has a more or less direct bearing upon this litigation.

The beginning may be said to be the Act of May 17th, 1917, P. L. 208. This Act in effect prohibited the use of the name or title "Drug Store" or any equivalent designation, in the conduct of any business by any one other than a "registered pharmacist" who was restricted to one such "store," but the prohibition did not extend to any "owner" who employed a "registered pharmacist" to "conduct" the business.

The supplementary Act of May 26th, 1921, P. L. 1171, prohibited the opening of any "pharmacy" without a permit from the "Pennsylvania Board of Pharmacy" and the Board from granting such permit unless the management of the store was in charge of a "registered pharmacist."

We follow the phrase of counsel for the plaintiff in the statement that the constitutionality of neither of these Acts is under attack.

Then comes the Act of May 13th, 1927, P. L., upon which a most vigorous condemnation is visited. It is entitled "A Supplement" to the Act of 1917. It opens with a pro-[fol. 102] hibition of ownership "of any pharmacy or drug store" by any one other than a "licensed pharmacist" with a saving (whole or partial) of the rights of those now lawfully engaged in the business to "continue to own &c.," and subjects those violating the provisions of the Act to a fine prohibitive in its effect.

A listing of the points of criticism of the Act would expand itself into an argument, so we content ourselves with the statement that it is charged to be unconstitutional on the broad grounds of being "an unreasonable and arbitrary" interference with "the plaintiff's business;" its freedom of contract, and is likewise said to be an impairment "of the obligation of existing contracts," by which we take to be meant that there is a practical compulsion put upon the plaintiff to default on contracts into which it has entered. The prayers of the Bill are for an ad interim restraining order and final decree preventing the defendants from enforcing the penalties of the Act of Assembly.

Conclusions Stated

The conclusions reached are that the restraining order be refused and the Bill be dismissed, with costs, for want of equity.

Discussion

We are led to these conclusions by the same line of reasoning so that they need not be discussed separately.

Jurisdiction

A preliminary question is raised which, in some of its phases, is one of jurisdiction in the broad meaning of that term. The Bill is said in this respect in effect to be premature because inter alia no criminal proceedings have been instituted. One of the objections usually urged to Bills of this general character is the assumption, as it is termed by Courts of Equity, of the power to dictate to the Courts of Criminal Law how they are to rule in cases which may come before them. So far as this question is meant to be raised, we think it to have been settled by the case of

Foster Cline vs. Frink Dairy Co. et al. (not yet reported). Indeed to await (so far as this feature goes) an actual prosecution would be at the cost of the right to ask for a re-[fol. 103] straining order. We are not sure how far these general jurisdictional questions are urged since the stipulation reached by counsel, but we think they are all set at rest by

Terrace vs. Thompson, 263 U. S. 197.
So. Ry. Co. vs. Greene, 216 U. S. 400.
Carroll vs. Greenwich Ins. Co., 199 U. S. 401.

The stipulation has relieved us of the duty of stating the facts, and we further see no need of distinguishing between the right to continue business at a store being conducted at the time the Act of Assembly was passed and one opened afterwards.

The real question presented is the constitutionality of the Pennsylvania Act of Assembly of May 13th, 1927. We accordingly go directly to that Statute. A few general observations may serve the purpose of an approach to the question to be decided.

There is general accord upon the proposition that the idea of a confederated union of States, which is a feature of our form of government, can be carried out only by refusing interference on the part of the Courts of the United States with the laws of the several States, except so far as may be necessary to preserve to every litigant his rights as a citizen of the United States. The rights, which are here invoked, assured to citizens of the United States by the Fourteenth Amendment, must of course be enforced by the Courts. Beyond this however we cannot go. The security of his person and enjoyment of his property are among the rights of every citizen of the United States, and that the one cannot be invaded nor he be deprived of the other otherwise than by what is known as "due process of law" is a broad proposition to which all assent. When, however, the averment is of an encroachment by and under the authority of an Act of Assembly duly passed by the Legislature of a State, then what is and what is now "due process of law" becomes all important. The list of cases dealing with this general theme is a long one but there is accord in this case upon the thought that the Act of As-

sembly should be upheld if the enactment has a substantial [fol. 104] relation to the public interests. We take this to mean that if there is such relation the Statute cannot be found to be an exercise of the arbitrary power of encroachment upon the personal liberty of any one affected by the law nor can it be said to be a like arbitrary exercise of the power to take from any one his property.

Without attempting by any other analysis of the cases, the following among those sited to us, some by the plaintiff and others by the defendant, may be listed as ruled upon the differentiation to which we have referred.

Weaver vs. Palmer, 270 U. S. 402.
Burns vs. Bryan, 264 U. S. 504.
Smith vs. Texas, 233 U. S. 630.
Cusack vs. Chicago, 242 U. S. 526.

This takes us back to the question of whether we are prepared to find that the public has no concern in the business of a drug store or the calling of a phamacist. If we do so find, we do it with the knowledge open to all and common to very many, that at one time in all parts of the country and still in what are called the rural districts, the local pharmacist or druggist serves many of his customers and patrons as their physician. Confidence in his judgment and skill had much to do with this practice; economy had perhaps more. So general was it that the physician of the neighborhood was likewise the druggist. He served the more well-to-do, and those who could not come to him, by visiting them at their homes. He served the others as they came to him at his drug store. They all received the like treatment. The only difference was in the rate of charge because he took with him his medicines on his rounds of the homes of his patients just as he gave professional advice and dispensed his medicines to those who came to his store. It is said that a relatively small part of the business of a drug store is the compounding of medicines and the filling of prescriptions. This is true.

There is a type of drug store known as the "cut rate," which perhaps has no prescription counter at all and scarcely ever more than a nominal one. The medicines and remedies sold are so called "proprietary" medicines. They

[fol. 105] are none the less as truly "prescribed" by the druggist as are the "filled prescriptions," and are just as much taken upon the faith and confidence of the user in the druggist as is the medicine "prescribed" by a physician.

We, of course, recognize the force of the argument addressed to us based upon the distinction between a law which forbade any one other than a skilled pharmacist to compound medicines and another law which forbade any one other than pharmacists to have a share in the ownership in the business of a drug store. Even here, however, we are unable to say that there is not a substantial relation of ownership to the public interests. The medicines must be in the store before they can be dispensed to those who come to the store for the help which medicines can afford them. What is there is dictated not by the judgment of the pharmacist who hands it out to customers but by those who have the financial control of the business. It may be the legislature thought that a corporate owner, in purchasing drugs, might give a greater regard to the price than to the quality; and if such was the thought of the legislature can this Court say it was without a valid connection with the public interests and so unreasonable as to be unlawful? How that matter affects the public interest is illustrated by another kind of business.

A number of years ago the business of selling liquor was wholly in the hands of those who sold it. Inn-keepers and Tavern-keepers stood high in the respect of their neighbors. The practice grew up of Brewers and Distillers taking over the ownership of places where intoxicating liquors were sold. The saloon when ownership and management became separated soon became a nuisance and a menace so that its abolishment was demanded, and no one at any time would wish to witness its return.

A saloon is of course not a drug store but the point is that the provisions of this Act can no more be said to have no substantial relation to the public interests than a law would have been which, with the object of preventing nuisances, forbade any one but tavern-keepers themselves from having a financial interest in the tavern-keeping business. That [fol. 106] financial ownership interest and managerial sense of responsibility each have a relation to a wise public policy

and hence to the public interest is evidenced by the experience of the Courts in Pennsylvania upon whom was thrust the responsibility of granting liquor licenses. Every Judge who had to do with this duty was soon brought to realize the element of danger to the public conduct of tavern and saloons the moment the profits from the sales of liquor went to owners who were removed from and had no sense of the responsibility of management. There enters into every business the two motives of a wish for profit and a sense of duty obligation towards those with whom the management deals. When these are joined the latter operates to some extent; the moment they are separated the former is in sole control. This thought deals with the relation between things which should be joined and the public policy of not permitting them to be separated. There is likewise the thought of things which should not be joined. The Act of Assembly of June 9th, 1881 providing that no license to sell intoxicating liquor be granted to the owner of a place of amusement is an illustration. The relation to the public interests is of course here more direct and the recognition of it in legislation more common but in principle the two legislative acts are alike.

Because of our inability to make the finding that the instant Act of Assembly has no substantial relation to the public interest, we cannot hold it to be unconstitutional. What opinion may be entertained of the wisdom of much of the legislation of this general character and of the motives of those who have prompted it, the Courts are not called upon to express.

Decrees in accordance with this opinion may be submitted.

[fol. 107] In United States District Court

[Title omitted]

Before Wooley, Circuit Judge, and Dickinson and Kirkpatrick, District Judges, Specially Sitting

Interlocutory Decree—Filed December 22, 1927

And now, to-wit, December 22nd, 1927, this cause came on to be heard at this term, and was argued by counsel, and

upon consideration thereof, it is ordered, adjudged and decreed as follows:

1. The plaintiff's motion for a preliminary injunction is denied and the restraining order prayed for by the plaintiff is refused.

By the Court.

Dickinson, Judge.

[fol. 108] In United States District Court

[Title omitted]

Before Woolley, Circuit Judge, and Dickinson and Kirkpatrick, District Judges, Specially Sitting

Final Decree—Filed December 22, 1927

And now, to-wit, December 22nd, 1927, this cause came on to be heard at this term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows:

1. The Bill of Complaint be, and is hereby dismissed for want of equity and at the costs of the plaintiff.

By the Court.

Dickinson, Judge.

[fol. 109] In United States District Court

[Title omitted]

Petition for Appeal—Filed December 22, 1927

The above named plaintiff, feeling aggrieved by the decrees made and entered in the above entitled proceeding in equity on the 22nd day of December, A. D. 1927, does hereby appeal from the said decrees to the Supreme Court of the United States, for the reasons specified in the Assignments of Error filed herewith; and prays that this appeal may be allowed, and that a transcript of the record proceedings

and papers, upon which the said decrees were made, duly authenticated, may be sent to the Supreme Court of the United States under the rules of the said Court in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of it be made.

Dated December 22nd, 1927.

Roy M. Sterne, Owen J. Roberts, Attorneys for Plaintiff.

[fol. 110] In United States District Court

[Title omitted]

Assignments of Error—Filed December 22, 1927

And now, to-wit, December 22nd, 1927, comes the plaintiff in the above entitled proceeding in equity and files the following Assignments of Error, upon which it will rely in the prosecution of its appeal from the decrees made by this Honorable Court on the 22nd day of December A. D. 1927 in the above entitled cause.

I

That the United States District Court for the Eastern District of Pennsylvania erred in denying the preliminary injunction prayed for by the plaintiff.

II

That the United States District Court for the Eastern District of Pennsylvania erred in dismissing the Bill of Complaint for want of equity.

III

That the United States District Court for the Eastern [fol. 111] District of Pennsylvania erred in imposing the costs of the above entitled proceeding in equity upon the plaintiff.

Wherefore the appellant prays that the aforesaid decrees be reversed and that the United States District Court for the Eastern District of Pennsylvania be ordered to enter a decree in accordance with the prayers of the Bill of Complaint, or in such form as the Supreme Court of the United States shall deem just.

Roy M. Sterne, Owen J. Roberts, Attorneys for Appellant.

[fols. 112-116] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed December 22, 1927

And now, to-wit, December 22nd, 1927, the foregoing appeal to the Supreme Court of the United States is allowed upon the giving by the above named plaintiff of a bond, as required by the law, in the sum of Two Hundred and Fifty Dollars ($250.00).

Dickinson, Judge.

[fol. 117] Clerk's certificate omitted in printing.

[fol. 118] In Supreme Court of the United States

Statement of Points to be Relied upon and Designation of Parts of Record to be Printed—Filed January 7, 1928

And now, to-wit, January 6th, 1928, Owen J. Roberts, Esq., counsel for the above named appellant, pursuant to Rule 11 of the Revised Rules of this Court, files the following

Designation of Points

I. That the specially constituted Trial Court erred in denying the Preliminary Injunction prayed for by the appellant.

II. That the specially constituted Trial Court erred in dismissing the Bill of Complaint for want of equity.

III. That the specially constituted Trial Court erred in imposing the costs of this cause upon the appellant.

The said Owen J. Roberts, Esq., thinks that the below listed parts of the record are material and necessary for the consideration of the above points; and therefore requests the Clerk of this Court to have printed the follow-
[fols. 119 & 120] ing

Parts of the Record

Bill of Complaint.

Injunction Affidavit of John S. Alley.

Injunction Affidavit of William C. Watt.

Reply Affidavit re Preliminary Injunction of Thomas J. Baldrige.

Reply Affidavit re Preliminary Injunction of Pennsylvania Board of Pharmacy (By Charles F. Kramer, of said Board).

Rebuttal Affidavit of John S. Alley on Behalf of Plaintiff.

Opinion of the Court sur motion for Preliminary Injunction dated July 25, 1927.

Supplemental Bill of Complaint.

Answer to Bill of Complaint.

Answer to Supplemental Bill of Complaint.

Renewed Motion for a Preliminary Injunction dated October 31, 1927.

Stipulation of Counsel dated November 1, 1927.

Opinion of the Court sur motion for Preliminary Injunction and sur Trial Hearing on Bill, Answer and Proofs, dated December 8, 1927.

Interlocutory Decree dated December 22, 1927.

Final Decree dated December 22, 1927.

Petition for Allowance of Appeal and Assignments of Error.

Order of Allowance of Appeal.

Owen J. Roberts, Attorney for Appellant.

Service of the above Designation of Points Intended To Be Relied Upon and Of Parts To Be Printed is hereby accepted and acknowledged, this fourth day of January, 1928.

Paul C. Wagner, Attorney for Appellees.

[fol. 121] [File endorsement omitted.]

Endorsed on cover: File No. 33,125. E. Pennsylvania D. C. U. S. Term No. 673. Louis K. Liggett Company, Appellant, vs. The Honorable Thomas J. Baldrige, Attorney General of the Commonwealth of Pennsylvania; Charles C. Campbell, Charles F. Kramer, et al., etc., et al. Filed December 31st, 1927. File No. 33,125.